

25. Comments on draft NHPA document.

Letter ID	Commenter Name	Commenter Org.	Text
00565	Nick Tilsen	Thunder Valley Community Development Corporation	<p>Unfortunately, the National Historic Preservation Act (NHPA) Review is not much better. In its current form, it is little more than an outline of a few of the relevant issues.</p> <p>Cultural resources are mentioned, but no analysis is done. A thorough cultural analysis should be part of any consideration of an area that is of critical spiritual significance to the Lakota. These omissions are glaring and thoroughly undermine the Environmental Justice section</p> <p>As mentioned above, the analysis of cultural and historical resources must not ignore the current cultural importance of those resources and their modern uses. The Black Hills are sacred to the Lakota, much like Jerusalem is to the Jews or the Vatican is to Catholics. Sacred cultural and historical resources must be fully protected, and doing this relies on the involvement of knowledgeable Lakota people, plenty of time, adequate finances, and the willingness to put the sacred above the dollar. Some places should not be subjected to uranium mining. Lakota people who are sharing their ancient knowledge, which they have spent a lifetime learning, should be offered compensation for their efforts and given credit for resulting information.</p> <p>[...]</p> <p>The EPA suggests the possibility of relying on the Nuclear Regulatory Commission's NHPA analysis. This would be disastrous. The NRC has floundered for years in its feeble attempt to do a NHPA analysis. It began the analysis without taking the need for full tribal consultation seriously, and it has dragged its feet through a piecemeal and incomplete process since then, despite legal direction to do a proper analysis. The EPA can - and should - do better.</p>
00527	Lillas Jones Jarding, Ph.D.	Clean Water Alliance	<p>The EPA must also do thorough tribal consultation. The existing documents indicate that this process has barely begun, and yet draft permits have been issued. This makes a mockery of the consultation process, which should be completed well before draft permits are issued, so that the resulting information can be analyzed. The EPA must halt all further action until mutually-satisfactory, government-to-government consultation is completed. All cultural and historical properties must be identified by Lakota experts, who should be paid if they so desire, and given complete protection.</p> <p>...</p> <p>Turning to the NHPA document, EPA should not rely on the NRC's section 106 review and consultation. That process is grossly incomplete. A section 106 review should, of course, have been completed before draft permits or a draft aquifer exemption were issued. At this point, the EPA should conduct its own review to insure that different viewpoints are brought to bear on the situation and to insure that thorough work is done by the federal agencies that are involved in the Dewey-Burdock project.</p> <p>...</p>

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			The NHPA document also indicates that tribal consultation is in its infancy. Tribal leaders from the two reservations that are most likely to experience impacts from the Dewey-Burdock project, the Oglala Sioux Tribe and the Cheyenne River Sioux Tribe, have not yet started consultation. Yet draft permits and a draft aquifer exemption have already been issued. This is a travesty, and it's difficult to see how the EPA can rectify the situation.
00527	Lilias Jones Jarding, Ph.D.	Clean Water Alliance	<p>ENVIRONMENTAL JUSTICE AND NATIONAL HISTORIC PRESERVATION ACT ISSUES</p> <p>The issues involving the EPA's DRAFT Environmental Justice (EJ) Analysis and its National Historic Preservation Act (NHPA) report are linked and will be discussed briefly in this section.</p> <p>The primary shortcoming of the DRAFT Environmental Justice Analysis is its limitation to a 20-mile radius. While it is true that Edgemont qualifies for impacted status, the 20-mile limitation effectively eliminates people who live downstream and on the Lakota reservations and who are impacted by the destruction of treaty, historical, and cultural sites. Note that both EJ and NHPA analysis should have been completed as part of a full tribal government-to-government consultation before the draft permits or aquifer exemption were released. There has, at this point, already been a violation of trust by the EPA that will be difficult or impossible to remedy.</p>
00527	Lilias Jones Jarding, Ph.D.	Clean Water Alliance	Note that both EJ and NHPA analysis should have been completed as part of a full tribal government-to-government consultation before the draft permits or aquifer exemption were released. There has, at this point, already been a violation of trust by the EPA that will be difficult or impossible to remedy.
8252	Lilias Jarding	Clean Water Alliance	<p>Dear Ms. Robinson:</p> <p>Thank you for your consideration of these comments on Docket Number EPA-R08-OW-2019-0512, the proposed Dewey-Burdock project in the Black Hills of South Dakota.</p> <p>While there are some major problems in the changes the EPA made between the issuance of the draft water permits for this project in 2017 and the issuance of the revised draft permits this year, the EPA did move in the right direction on at least one point. This was the agency's decision to acknowledge the cultural, spiritual, and legal ties that the Lakota and other indigenous nations have to the Black Hills. We also appreciate your decision to include the entire Black Hills in some of your discussion of the impacts of the proposed Dewey-Burdock project. Unfortunately, these steps in the right direction are followed by EPA's complete dismissal of indigenous cultural and spiritual issues as outside your scope, or as the EPA put it:</p> <p>The Black Hills is a sacred site to many Tribal Nations and Tribal members. Tribal Nations and Tribal members describe impact by historic and present-day mining activities in the Black Hills not only with regard to environmental and other impacts to physical resources, but also based their interests in the preservation of the area for spiritual, religious and cultural purposes. While recognizing these</p>

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			<p>interests, the EPA's authorities to address potential impacts from its SDWA actions are limited to the protection of underground sources of drinking water.</p> <p>After all that, your failure to consider these issues is in clear disdain of the National Historic Preservation Act, the environmental review process, and the many comments that you have received. It should be clear to you that water is a spiritual issue, a cultural issue, and a treaty issue. You cannot separate water from spirituality or water from culture or water from treaties and say that you will only consider one or the other. We urge you to look at these matters in more depth and to give full consideration to Tribal concerns, followed by appropriate action — the denial of these permits.</p> <p>Related topics that should be studied — but that are not covered in the current documents — include:</p> <ul style="list-style-type: none"> • Specific measures to protect publicly-known cultural, historical, and sacred sites. • A process other than allowing non-qualified Powertech staff to self-monitor on cultural issues, determine the importance of sites as they're encountered by heavy equipment, and then perhaps have time to arrange for the protection of cultural and/or sacred sites. This is a recipe for destruction of cultural sites. Some of us have friends who are heavy equipment operators or have been heavy equipment operators, and we know the industry standard. • Protection of landscape-scale cultural and spiritual sites. <p>As for tribal consultation more generally, first, the original draft permits should not have been issued until proper and meaningful Tribal consultation had taken place. Second, tacking on consultation late in the process does not give Tribal issues sufficient consideration. And third, holding meaningless consultation when you have already said you'll ignore issues that are likely to be raised during that consultation is disingenuous and violates the spirit and the letter of the law.</p> <p>Piggybacking on the failed NRC cultural resources process would not fulfill the EPA's responsibilities in this matter any more than it has fulfilled the NRC's responsibilities. Speaking of piggybacking, the EPA revised draft permit documents still put far too much faith in the opinions of Powertech and of other agencies. The EPA must develop its own research and information in this process. In particular, as discussed at length in earlier comments, it must not use the applicant as its source for information that forms the basis of the discussion of the problems that will arise during this project.</p> <p>[...]</p>

Comments on NHPA in general

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00036	Ex. 6 Personal Privacy (PP)	Individual	<p>4. Meaningful involvement and consultation</p> <p>Adequate attention to this history would further require the EPA revisit its existing approach to meaningful involvement and tribal consultation with regard to the proposed Dewey-Burdock project. While the EPA docket detailing the draft Class III and Class V permits for the project contains a draft document detailing plans for compliance with the National Historic Preservation Act (NHPA), including plans for tribal consultation, these plans do not feature as part of the EJ analysis, which we strongly feel they should. In this draft NHPA compliance document, the EPA details its plans to first conduct "inform and educate" sessions with tribes prior to beginning government-to-government consultation. The EPA notes in this document that after meeting with Oglala Sioux Tribal leaders, the EPA "was informed that the Tribe considered these meetings to be "inform and educate" meetings rather than government-to-government consultation." Such a difference in interpretation cannot characterize a legitimate consultation process, and we are left wondering why it is that meetings which the EPA considered to be consultative were instead considered to be informational by the Tribe.</p> <p>...</p> <p>At the hearings in May, Ms. Valois Shea reassured all those present that the EPA permits in question would not be issued until the tribal consultation process was completed. We hope the EPA takes this promise seriously and soon embarks upon a meaningful tribal consultation process which stands up not just to the standards of Lakota and other Native EJ scholars and activists, but indeed the stated standards of the EPA itself.</p>
07461 (5/9 Rapid City hearing)	Ex. 6 Personal Privacy (PP)	Individual	<p>I find the EPA's acknowledgement of the cultural importance of the Black Hills to, quote, "many Native American tribes" and associated consultation processes inadequate and disappointing, as many people have noted today. In the -- from the National Historic Preservation Act document that was offered on the website, the -- the -- it was noted that the Oglala Sioux Tribe considered government-to-government consultation attempts to be inform-and-educate meetings. So when you have one side considering meetings to be government-to-government consultation and another side seeing those meetings as being inform-and-educate from one side, that's a problem.</p> <p>And therefore, when developing the National Historic Preservation Act draft compliance and Environmental Justice draft analysis documents, the EPA's analysis is already flawed in saying that the site in question is not located on tribal lands.</p>
00039	Colleen Brennan	Individual	<p>PowerTech/Azarga must formally consult under Section 106 of NHPA with First Nations of the 1851 and 1868 Fort Laramie Treaties. The Oglala Sioux Tribe currently stands against, in opposition to uranium mining in the Black Hills. Indigenous people know it is not worth the risk!</p>
00493	Nancy Kile	Individual	<p>Regarding the identification of traditional cultural properties at the Dewey-Burdock Project site. Formal consultation under Section 106 of NHPA with First Nations of the 1851 and 1868 Fort Laramie Treaties must be completed. See attached documents for listing.</p>

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00523	Harold Frazier	Cheyenne River Sioux Tribe	<p>The federal government has further obligations to tribes under the National Historic Preservation Act ("NHP A") and the Religious Freedom Restoration Act ("RFRA"). The NHPA was enacted to preserve historic resources in the midst of modern projects and requires agencies to fully consider the effects of its actions on historic, cultural, and sacred sites. Section 106 of the NHP A requires that prior to issuance of any federal funding, permit, or license, agencies must take into consideration the effects of that "undertaking" on historic properties. 54 U.S.C. § 306108; 36 C.F.R. § 800.1. The Section 106 process also requires consultation between agencies and Indian Tribes on federally-funded or authorized "undertakings" that could affect sites that are on, or could be eligible for, listing in the National Register, including sites that are culturally significant to Indian Tribes. 54 U.S.C. § 302706. An agency official must "ensure" that the process provides Tribes with "a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties ... articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." 36 C.F.R. § 800.2(c)(H)(A). This requirement imposes on agencies a "reasonable and good faith effort" by agencies to consult with Tribes in a "manner respectful of tribal sovereignty." <i>Id.</i> 36 C.F.R. § 800.2(c)(2)(ii)(B); <i>see also id.</i> § 800.3(-f) (any Tribe that "requests in writing to be a consulting party shall be one").</p>
00528	David Frankel	Aligning for Responsible Mining	<p>EPA must delay any permitting action until a fully competent cultural resources survey is conducted and the Tribe and the public has an opportunity to review and comment on the potential impacts to those important resources. Additionally, EPA should reject the PA as inadequate and engage in meaningful and good-faith consultation with the Oglala Sioux Tribe professional staff and Tribal Council in order to ensure that, in coordination with the Tribe, all cultural resources are identified, impacts are assessed and mitigation measures are developed and implemented.</p> <p>[...]</p> <p>4. COMMENTS ON THE IDENTIFICATION OF TRADITIONAL CULTURAL PROPERTIES AT THE DEWEY-BURDOCK PROJECT SITE AREA OF POTENTIAL EFFECTS</p> <p>EPA states that:</p> <p>Based on the information we have reviewed to date, and subject to resolving concerns identified in the NRC administrative review process, the EPA believes that the level of work completed under the auspices of the NRC on the Class III Cultural Resources Survey appears thorough and comprehensive for the APE defined by the NRC, provided the PA stipulations are followed concerning the unexpected discovery of additional historical properties.</p> <p>EPA states that its consideration of the extent of cultural resource issues at the Dewey- Burdock site is based on "Section 3.9.3 of the NRC Supplemental Environmental Impact Statement prepared for the Dewey-Burdock Project (SEIS) and summarized in Appendix B of the NRC PA."</p> <p>EPA's characterization of the current status of the NRC Staff's National Environmental Policy Act and National Historic Preservation Act compliance is not consistent with the Nuclear Regulatory Commission's recent ruling.¹⁰</p>

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			<p>In fact, the result of the Nuclear Regulatory Commission process was an express holding that the Class III archaeological study conducted at the site failed to satisfy any of the requirements associated with either the National Environmental Policy Act (NEPA) or the National Historic Preservation Act (NHPA) with respect to cultural resources.</p> <p>Specifically, the NRC affirmed the Atomic Safety Licensing Board’s express ruling that:</p> <p>The Board finds that the NRC Staff has not carried its burden of demonstrating that its FSEIS complies with NEPA and with 10 C.F.R. Part 40. The environmental documents do not satisfy the requirements of the NEPA, as they do not adequately address Sioux tribal cultural, historic and religious resources.</p> <p><i>In the Matter of Powertech USA, Inc.</i>, LBP-15-16, 81 NRC 618, 708 (2015).</p> <p>Thus, EPA’s reliance on the NRC SEIS is entirely misplaced. There has never been a cultural resources survey conducted on the Dewey-Burdock site that took into account any Sioux cultural resources. EPA simply cannot rely on the NRC SEIS analysis in any way for such a survey.</p> <p>Further, the NRC affirmed the Board’s ruling that “Meaningful consultation as required by [the NHPA] has not occurred.” Id. This ruling was made despite the existence of the Programmatic Agreement, (“PA”) which EPA suggests it might sign on to in an effort to fulfill its NHPA obligations.</p> <p>However, EPA appears to be unaware that the PA it references was roundly condemned by every single Sioux tribal government that reviewed it. Not a single Tribe has agreed to be a signatory on the PA meaning the PA has been literally shoved down the Tribes’ collective throats. The critique of the terms of the PA from the Tribes was severe.¹¹ In these letters, the Oglala Sioux Tribe identifies specific terms in the PA that fail to provide any detail or specificity as to future analyses of the project area, methodologies proposed for these analyses, or what mitigation measures may be adopted in the future to address the impacts.¹²</p> <p>The Standing Rock Sioux Tribe raised similar concerns, but goes into highly specific detail, offering not only a letter describing their frustration in dealing with the NRC Staff on this issue, but also providing multiple substantive line by line comments, questions, and critiques to the PA.¹³ Unfortunately, NRC Staff did not provide any specific substantive response to either set of tribal concerns, nor did NRC Staff incorporate the changes proposed by either tribe. Instead, NRC Staff and Powertech pushed to finalize the PA without addressing the tribes’ concerns.</p> <p>These failures to comply with NEPA and NHPA are being highly scrutinized by federal courts. See <i>Standing Rock Sioux Tribe v. U.S. Army Corps of Eng’rs</i>, (D.C. Cir., slip. op. June 14, 2017).¹⁴ In that case, the Court ruled that the agency failed to include a large enough area in its analysis (similar to the comments herein that Buffalo Gap, SD, should be included in the EJ Analysis) and also that an EIS should have been done. These same failures are present in this EPA UIC permit decision.</p> <p>This type of lack of meaningful consultation, in part, is what led to a NRC ruling finding a failure to comply with the NHPA consultation duties. EPA should not compound and exacerbate this failure by endorsing such a deeply flawed PA. Instead, EPA should seek to conduct a consultation effort that complies with the NHPA and meaningfully involves the Tribes in a discussion of the potentially affected cultural resources, the potential impacts to those resources, and possibly mitigation measures that can be implemented to protect those resources.</p>

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			<p>In any case, the existing PA is currently the subject of further discussion and negotiation as part of the NRC's finding that the NRC Staff has failed to comply with either NEPA or the NHPA with respect to identifying and evaluating impacts to Sioux cultural resources at the site. See May 31, 2017 letter from Oglala Sioux Tribe Historic Preservation Office; May 19, 2016 and January 31, 2017 Oglala Sioux Tribe/NRC Staff meeting summaries (all specifically identifying changes to the PA as necessary topics of ongoing NHPA consultation).</p> <p>As such, EPA should increase its involvement and either work to develop an agreement with the affected Tribes, including the Oglala Sioux Tribe that properly takes into consideration the Tribes' perspectives. In the alternative, EPA should engage in the ongoing discussions between NRC and the Tribes, including the Oglala Sioux Tribe, and work toward a PA that satisfies all parties. The Oglala Sioux Tribe has a formal ordinance in effect regarding consultation, which requires the involvement of the Oglala Sioux Tribal Council.¹⁵</p> <p>Notably, the record developed during the NRC hearing process demonstrates that the proposed Dewey-Burdock site contains significant cultural resources that could be impacted by the project. This fact is made clear even though no meaningful cultural resources survey has been conducted on the property.</p> <p>Even the Augustana Class III archaeological survey upon which EPA attempts to rely recognizes that "the sheer volume of sites documented in the area is noteworthy."¹⁶ Despite this acknowledgement, no competent Sioux cultural resources survey has ever been conducted on the site.</p> <p>The NRC hearing record demonstrates that EPA simply cannot rely on the Powertech produced Class III archaeological survey for purposes of identifying impacts to cultural resource so as to satisfy its environmental impact review or NHPA obligations. Powertech candidly admits "that identifying religious or culturally significant properties in a project area is entirely reliant of the Tribes themselves and the special expertise of the Tribal cultural practitioners...."</p> <p>Simply put, entities such as NRC or Powertech are not equipped with the Tribe-specific knowledge and traditions to adequately instruct a specific Tribe using 'proper scientific expertise' on this subject."¹⁷ The record and testimony contains no evidence that NRC Staff successfully equipped itself or acquired the necessary resources to meet NRC's NEPA duties involving religious and cultural resources.</p> <p>The primary reliance by EPA on the Augustana study is not supportable – particularly given the testimony at the NRC hearing. Dr. Hannus, who lead the Augustana study at the behest of the applicant admitted that his team is not "in any way qualified to be conducting TCP surveys" and further conceded that given the heightened cultural issues of the Sioux Tribes that "there will be sites that will need to be addressed archaeologically"; Dr. Hannus: "And again, that really should clearly, I think, show us that for us to then be able to make some kind of in roads ourselves, being not of Native background, to identification of sites that are traditional cultural properties that have a tie to spirituality and so on, it is not in our purview to do that."¹⁸</p> <p>Applicant witness Dr. Luhman reiterated this point, confirming that "a traditional Level 3 survey may, in fact, encounter some resources that would be associated with Native American groups or which they would identify. But, they wouldn't necessarily identify all of the resources primarily because some of the knowledge is not available to those conducting the Level 3 survey. That would be provided by the Native American groups themselves."¹⁹</p>

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			<p>OST witness Mr. Mesteth: “[w]e’re the ones that are the experts, not the archaeologists. They make assumptions and hypotheses about our cultural ways and it’s not accurate. Some of the information is not accurate. And that’s why we object in certain situations.”²⁰</p> <p>Dr. Hannus testified that his office has never worked on any projects that considered the cultural resources at a site.²¹ Despite this fact, NRC Staff witness Dr. Luhman testified that NRC Staff relied on Augustana to conduct all of the initial and follow up field survey work at the site, with the exception of the three non-Sioux tribes that submitted reports.²²</p> <p>Upon the Sioux Tribes’ request as early as 2011 that cultural resource surveys be conducted at the site, NRC Staff prompted the applicant to bring in Dr. Sabastian and her firm to coordinate this review.²³ However, Dr. Sabastian also testified that she also has never been involved in any kind of “actual physical on-the-ground TCP survey-kind of thing that we’re talking about.”²⁴</p> <p>Lastly, Mr. Fosha testified that he worked with the applicant and Augustana “from the very start of the project, so the bulk of this material is a result of myself reviewing what Augustana College had been doing in the field.”²⁵ Mr. Fosha testified that he met with the applicant and between them discussed methods for identification of sites and the methods and steps to take “throughout the process,” but only related to the State of South Dakota permit, and having “nothing to do with the NRC permit or anything like that” – even remarking that “up until the point where Augustana was nearly finished I was the only review agency on this project.”²⁶</p> <p>Despite Mr. Fosha being the only person giving any direction to Dr. Hannus’ Augustana team, Mr. Fosha testified that his experience and focus was solely “the field of archaeology” and not culturally as to the concerns of the Tribes.²⁷</p> <p>The only NRC Staff or applicant witness that testified to having any experience in conducting cultural resource field surveys was NRC Staff witness Dr. Luhman. However, as stated, Dr. Luhman admitted to relying exclusively on Augustana for both the initial field work and the follow up field studies, even though Dr. Hannus’ testimony had confirmed that Augustana had no culturally relevant experience.²⁸</p> <p>Dr. Luhman did testify that “in those projects in which I have been involved [a cultural survey] it is typically that [the Tribes] are working alongside with the archaeological survey team as they are going about doing the survey. It could be in the preliminary stages of doing the generalized recognizance (sic) of the project area. Oftentimes the federal agency and other parties will be along that process so that there can be discussions while out in the field, and these are for sometimes very large projects. But in my experience it typically is at the same time when there is an ongoing consultative and survey process.”²⁹</p> <p>NRC Staff witness Ms. Yilma admitted that no written cultural resources analysis prepared during any part of the NEPA analysis included any comments or reports from any Sioux Tribes.³⁰ This is despite testimony from NRC Staff witness Ms. Yilma as to the NRC Staff’s recognition of the importance of the area to the Sioux from a cultural perspective from the earliest stages of the application review stage.³¹ NRC Staff witness Ms. Yilma also testified as to the importance and focus at least as early as 2011 by both the Sioux Tribes and within NRC Staff on the need for culturally-based field surveys in order to fulfill the NEPA and NHPA requirements.³²</p> <p>NRC Staff witness Ms. Yilma testified that after meeting in 2011 with the Oglala Sioux, Standing Rock Sioux, Flandreau Santee Sioux, Sisseton Wahpeton (Sioux), Cheyenne River Sioux, and Rosebud Sioux, NRC Staff specifically de 33 liberated about conducting an ethnographic study of the site to ensure incorporation of Sioux</p>

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			<p>cultural and historic perspectives, but “the ultimate decision was instead of an ethnographic study a field survey was necessary, so we focused our attention on the field survey approach.”³⁴</p> <p>Despite admitting that it was “necessary” to the analysis, no cultural resources review or field study incorporating any Sioux cultural expertise was ever conducted at the site or incorporated into any NEPA document.³⁵</p> <p>This testimony and evidence establishes NRC Staff’s failure to conduct the necessary hard look under NEPA, as by their own admission, despite it being necessary to the analysis, no Sioux comments or reports were incorporated into the cultural resources reviews, and none of the parties that conducted any cultural review of the site, including field surveys, were trained, experienced, or competent to review or survey the area for, let alone determine impacts from the project to, the cultural resources of Sioux origin. Admissions and testimony confirm that NRC Staff deferred to the applicant’s unqualified consultants, while rejecting proposals to incorporate Sioux cultural expertise.</p> <p>As a result of Powertech’s and NRC Staff’s inability to fulfill their obligations to properly ensure a competent cultural resources survey of the Dewey-Burdock site, EPA cannot rely on the NRC’s NEPA documents to assess the cultural resources impacts of the proposed mine.</p> <p>Similarly, because NRC Staff has failed to fulfill its government-to-government consultation duties under the NHPA, EPA also cannot rely on the PA or any other NRC Staff consultation to fulfill its own obligations under the NHPA.</p> <p>[...]</p> <p>6. Comments on measures to avoid, minimize or mitigate potential adverse effects on historic and traditional cultural properties pursuant to Section 106 of the National Historic Preservation Act and 36 CFR § 800.2(d) and § 800.6(a)(4)</p> <p>The Environmental Protection Agency National Historic Preservation Act Compliance and Review for the Proposed Dewey-Burdock In-Situ Uranium Recovery Project, which is part of the Administrative Record for the UIC Class III Draft Area Permit, discusses how the EPA intends to comply with Section 106 of the National Historic Preservation Act.</p> <p>To date, the EPA has done nothing meaningful to avoid, minimize or mitigate potential adverse effects on historic and TCPs under Section 106 other than rely on the promises of an insolvent and corrupt organization. Therefore, there has been a complete failure to provide measures required by Section 106 of NHPA and 36 CFR § 800.2(d) and § 800.6(a)(4).</p>
00537	<div> <div></div> <div>Ex. 6 Personal Privacy (PP)</div> </div>	Native Research Solutions	<p>Cultural data, including archaeological and burial sites, need to be inventoried in order to ensure sites are protected. Making a decision on the permits and exemption now without the necessary data is unwise and premature. Proceeding with the permits before all the information is available denies the public a meaningful opportunity to participate and be heard.</p>

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00546	Troy S Weston	Oglala Sioux Tribe	Under section 106 of the National Historic Preservation Act, the EPA must consult with the Oglala Sioux Tribal Historic Preservation Office in the identification, evaluation and determination of potential impacts to historic properties by the proposed DeweyBurdock injection wells. (54 U.S.C. §306108). Under Executive Order 13175, the EPA must also engage in government-to-government consultation with the Oglala Sioux Tribal Council on the proposed UIC permit. (65 Fed. Reg. 67249). The attempt by EPA to combine Section 106 consultation meetings with government-to-government consultation resulted in confusion and lack of compliance with either consultation requirement.
00546	Troy S Weston	Oglala Sioux Tribe	<p>EPA FAILED TO COMPLY WITH THE CONSULTATION REQUIREMENTS OF NHPA SECTION 106</p> <p>Under Section 106 of the National Historic Preservation Act, "The head of any Federal agency ... prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property." (54 U.S.C. §306108). In the administrative record, EPA has acknowledged that the need to comply with this requirement. However, EPA's <i>National Historic Preservation Act Draft Compliance and Review Document</i> fails to demonstrate compliance with NHPA Section 106.</p> <p>The draft document purports to demonstrate consultation with the OST THPO by reference to a separate document of the Nuclear Regulatory Commission, captioned <i>Summary of Meeting with OST Regarding the Dewey-Burdock In Situ Uranium Recovery Project. May 19, 2016</i>. This meeting does not constitute Section 106 compliance by EPA.</p> <p>The <i>Summary of Meeting</i> document states:</p> <p>The purpose of the meeting was twofold: (i) to introduce the NRC's new management team responsible for the consultation process with the Oglala Sioux Tribe and the Tribe's new Tribal Historic Preservation Office staff, and (ii) to start the dialogue, on a Government-to-Government basis, regarding a path forward for consultation with the Oglala Sioux Tribe to address the Atomic Safety and Licensing Board's findings ...</p> <p>[HYPERLINK "https://www.nrc.gov/docs/ml1618/ml16182a069.pdf"]). [May 19, 2016 NRC OST Meeting Summary]</p> <p>The meeting was about a related action by a separate agency, and not specifically about the identification, evaluation and determination of impacts from the proposed UIC injection wells to be permitted by EPA. It does not constitute compliance by EPA with NHP A Section 106. There were no members of the Oglala Sioux Tribal Council at the meeting. It was not government-to-government consultation in compliance with E.O. 13175. The meeting combined and confused the two separate consultation requirements, and complied with neither requirement.</p> <p>The Table beginning on page 7 of the <i>National Historic Preservation Act Draft Compliance and Review Document</i> likewise combines the issues of section 106 consultations and government-to-government meetings. On page 9, the Table lists "April 28, 2016 Consultation meeting with the Oglala Sioux Tribe," described as "In-person meeting at the Oglala Sioux Justice Center." The EPA totally confused the governmentto-government consultation requirement under E.O. 13175 with the NHPA Section 106 consultation requirement -and complied with neither requirement.</p> <p>The lack of NHP A Section 106 consultation is evidenced by the failure to address the OST THPOs concerns with the Programmatic Agreement, as discussed in the May 19, 2016 meeting between the Tribe and NRC. The lack of</p>

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			<p>government-to-government consultation is evidenced by EPA's failure to comply with OST Ordinance No. 11-10 (<i>Ordinance Establishing Procedures for Government-to-Government Consultation Between the Oglala Sioux Tribe and the United States</i>). Ultimately, EPA failed to comply with the consultation requirements of federal law, and the Dewey-Burdock UIC permit applications must be denied accordingly.</p> <p>I further express my support for the related concerns of the consolidated intervenors in this docket, as well as the testimonies of the Tribal Historic Preservation Officers of the <i>Oceti Sakowin Oyate</i>.</p> <p>The concerns of the Oglala Sioux Tribe must be fully considered and acted upon by EPA. Approval of the Dewey-Burdock injection well application would violate the 1851 and 1868 Fort Laramie Treaties. Consequently, it violates federal and international law. It poses extreme risk to the waters of the Oglala Sioux Tribe, reserved under the Winters Doctrine. The EPA has given no consideration to these valuable property rights of our Tribe. Important consultation requirements under NHPA Section 106 and E.O. 13175 have been avoided and confused. EPA has failed to comply with these important consultation requirements. Further, the EPA has failed to consider the cumulative impacts of its actions on water quality and impact on the Pine Ridge Indian Reservation. For these reasons and as further described in the attached addendum, the Dewey-Burdock Class V UIC permit application must be denied.</p> <p>Additional comments of the Oglala Sioux Tribe providing more detail are attached in the addendum hereto and incorporated herein.</p> <p>[...]</p> <p>ADDENDUM TO OGLALA SIOUX TRIBE COMMENTS</p> <p>The federal courts have addressed the strict mandates of the National Historic Preservation Act:</p> <p>Under the NHPA, a federal agency must make a reasonable and good faith effort to identify historic properties, 36 C.F.R. § 800.4(b); determine whether identified properties are eligible for listing on the National Register based on criteria in 36 C.F.R. § 60.4; assess the effects of the undertaking on any eligible historic properties found, 36 C.F.R. §§ 800.4(c), 800.5, 800.9(a); determine whether the effect will be adverse, 36 C.F.R. §§ 800.5(c), 800.9(b); and avoid or mitigate any adverse effects, 36 C.F.R. §§ 800.8(c), 800.9(c). The [federal agency] must confer with the State Historic Preservation Officer ("SHPO") and seek the approval of the Advisory Council on Historic Preservation ("Council").</p> <p><i>Muckleshoot Indian Tribe v. U.S. Forest Service</i>, 177 F.3d 800, 805 (9th Cir. 1999). See also 36 C.F.R. § 800.8(c)(1)(v) (agency must "[d]evelop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects of the undertaking on historic properties and describe them in the EA.").</p> <p>The Advisory Council on Historic Preservation ("ACHP"), the independent federal agency created by Congress to implement and enforce the NHPA, determines the methods for compliance with the NHPA's requirements. See <i>National Center for Preservation Law v. Landrieu</i>, 496 F. Supp. 716, 742 (D.S.C.), <i>aff'd per curiam</i>, 635 F.2d 324 (4th Cir. 1980). The ACHP's regulations "govern the implementation of Section 106," not only for the Council itself, but for all other federal agencies. <i>Id.</i> See also <i>National Trust for Historic Preservation v. U.S. Army Corps of Eng'rs</i>, 552 F. Supp. 784, 790-91 (S.D. Ohio 1982).</p> <p>NHPA § 106 ("Section 106") requires federal agencies, prior to approving any "undertaking," such as the UIC permits for the proposed Dewey-Burdock Project, to "take into account the effect of the undertaking on any</p>

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			<p>district, site, building, structure or object that is included in or eligible for inclusion in the National Register.” 16 U.S.C. § 470(f). Section 106 applies to properties already listed in the National Register, as well as those properties that may be eligible for listing. See <i>Pueblo of Sandia v. United States</i>, 50 F.3d 856, 859 (10th Cir. 1995). Section 106 provides a mechanism by which governmental agencies may play an important role in “preserving, restoring, and maintaining the historic and cultural foundations of the nation.” 16 U.S.C. § 470.</p> <p>If an undertaking is the type that “may affect” an eligible site, the agency must make a reasonable and good faith effort to seek information from consulting parties, other members of the public, and Native American tribes to identify historic properties in the area of potential effect. 36 C.F.R. § 800.4(d)(2). See also <i>Pueblo of Sandia</i>, 50 F.3d at 859-863 (agency failed to make reasonable and good faith effort to identify historic properties).</p> <p>The NHPA also requires that federal agencies consult with any “Indian tribe ... that attaches religious and cultural significance” to the sites. 16 U.S.C. § 470(a)(d)(6)(B). Consultation must provide the tribe “a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.” 36 C.F.R. § 800.2(c)(2)(ii).</p> <p>Apart from requiring that an affected tribe be involved in the identification and evaluation of historic properties, the NHPA requires that “[t]he agency official shall ensure that the section 106 process is initiated early in the undertaking’s planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.” 36 C.F.R. § 800.1(c) (emphasis added). The ACHP has published guidance specifically on this point, reiterating in multiple places that consultation must begin at the earliest possible time in an agency’s consideration of an undertaking, even framing such early engagement with the Tribe as an issue of respect for tribal sovereignty. ACHP, <i>Consultation with Indian Tribes in the Section 106 Review Process: A Handbook</i> (November 2008), at 3, 7, 12, and 29.</p> <p>Regarding respect for tribal sovereignty, the NHPA requires that consultation with Indian tribes “recognize the government-to-government relationship between the Federal Government and Indian tribes.” 36 C.F.R. § 800.2(c)(2)(ii)(C). See also Presidential Executive Memorandum entitled “Government-to-Government Relations with Native American Tribal Governments” (April 29, 1994), 59 Fed. Reg. 22951, and Presidential Executive Order 13007, “Indian Sacred Sites” (May 24, 1996), 61 Fed. Reg. 26771. The federal courts echo this principle in mandating all federal agencies to fully implement the federal government’s trust responsibility. See <i>Nance v. EPA</i>, 645 F.2d 701, 711 (9th Cir. 1981) (“any Federal Government action is subject to the United States’ fiduciary responsibilities toward the Indian tribes”).</p> <p>Whenever there is ambiguity interpreting or applying NHPA, or other laws, the federal agency staff is not entitled to “deference to an agency interpretation of an ambiguous statutory provision involving Indian affairs. In the usual circumstance, ‘[t]he governing canon of construction requires that ‘statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit.’ This departure from the [normal deference to agencies] arises from the fact that the rule of liberally construing statutes to the benefit of the Indians arises not from the ordinary exegesis, but ‘from principles of equitable obligations and normative rules of behavior,’ applicable to the trust relationship between the United States and the Native American people.” <i>California Valley Miwok Tribe v. United States</i>, 515 F.3d 1262 (D.C. Cir. 2008) quoting <i>Albuquerque</i></p>

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			<p><i>Indian Rights v. Lujan</i>, 930 F.2d 49, 59 (D.C. Cir. 1991); <i>Cobell v. Norton</i>, 240 F.3d 1081, 1101 (D.C. Cir. 2001) (quoting <i>Montana v. Blackfeet Tribe of Indians</i>, 471 U.S. 759, 766, (1985)).</p> <p>EPA states that:</p> <p>Based on the information we have reviewed to date, and subject to resolving concerns identified in the NRC administrative review process, the EPA believes that the level of work completed under the auspices of the NRC on the Class III Cultural Resources Survey appears thorough and comprehensive for the APE defined by the NRC, provided the PA stipulations are followed concerning the unexpected discovery of additional historical properties.</p> <p>EPA states that its consideration of the extent of cultural resource issues at the Dewey-Burdock site is based on "Section 3.9.3 of the NRC Supplemental Environmental Impact Statement prepared for the Dewey-Burdock Project (SEIS) and summarized in Appendix B of the NRC PA."</p> <p>EPA's characterization of the current status of the NRC Staff's National Environmental Policy Act and National Historic Preservation Act compliance is not consistent with the Nuclear Regulatory Commission's recent ruling. See CLI-16-20 (https://www.nrc.gov/docs/ML1635/ML16358A434.pdf). In fact, the result of the Nuclear Regulatory Commission process was an express holding that the Class III archaeological study conducted at the site failed to satisfy any of the requirements associated with either the National Environmental Policy Act (NEPA) or the National Historic Preservation Act (NHPA) with respect to cultural resources.</p> <p>Specifically, the NRC affirmed the Atomic Safety Licensing Board's express ruling that:</p> <p>The Board finds that the NRC Staff has not carried its burden of demonstrating that its FSEIS complies with NEPA and with 10 C.F.R. Part 40. The environmental documents do not satisfy the requirements of the NEPA, as they do not adequately address Sioux tribal cultural, historic and religious resources.</p> <p><i>In the Matter of Powertech USA, Inc.</i>, LBP-15-16, 81 NRC 618, 708 (2015). Thus, EPA's reliance on the NRC SEIS is entirely misplaced. Indeed, there has never been a cultural resources survey conducted on the Dewey-Burdock site that took into account any Sioux cultural resources. Moreover, NRC has divided its project approval into segments rendering the scope of NRC's consultation inapplicable to EPA's UIC analysis and approvals. As such, EPA simply cannot rely on the NRC SEIS analysis in any way for such a survey.</p> <p>Further, the NRC affirmed the Board's ruling that "Meaningful consultation as required by [the NHPA] has not occurred." <i>Id.</i> This ruling was made despite the existence of the Programmatic Agreement, which EPA suggests it might sign on to in an effort to fulfill its NHPA obligations. However, EPA appears to be unaware that the PA it references was roundly condemned by every single Sioux tribal government that reviewed it. Indeed, not a single Tribe has agreed to be a signatory on the PA. The critique of the terms of the PA from the Tribes was severe. See attached February 5, 2014 Letter from Oglala Sioux Tribe President Bryan Brewer to NRC Staff; February 20, 2014 email from Standing Rock Sioux Tribe Historic Preservation Officer to NRC Staff (marked Exhibit NRC-016). In these letters, the Oglala Sioux Tribe identifies specific terms in the Agreement that fail to provide any detail or specificity as to future analyses of the project area, methodologies proposed for these analyses, or what mitigation measures may be adopted in the future to address the impacts. <i>Id.</i> at 2. The Standing Rock Sioux Tribe raises similar concerns, but goes into highly specific detail, offering not only a letter describing their frustration in dealing with the NRC Staff on this issue, but also providing multiple substantive line by line comments, questions, and critiques to the Agreement. <i>Id.</i> at 7-20. Unfortunately, NRC Staff did not</p>

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			<p>provide any specific substantive response to either set of tribal concerns, nor did NRC Staff incorporate the changes proposed by either tribe. Instead, NRC Staff and Powertech pushed to finalize the PA without addressing the tribes' concerns.</p> <p>This type of lack of meaningful consultation, in part, is what led to a NRC ruling finding a failure to comply with the NHPA consultation duties. EPA should not compound and exacerbate this failure by endorsing such a deeply flawed PA. Instead, EPA should seek to conduct a consultation effort that complies with the NHPA and meaningfully involves the Tribes in a discussion of the potentially affected cultural resources, the potential impacts to those resources, and possibly mitigation measures that can be implemented to protect those resources.</p> <p>In any case, the existing PA is currently the subject of further discussion and negotiation as part of the NRC's finding that the NRC Staff has failed to comply with either NEPA or the NHPA with respect to identifying and evaluating impacts to Sioux cultural resources at the site. See attached May 31, 2017 letter from Oglala Sioux Tribe Historic Preservation Office; May 19, 2016 and January 31, 2017 Oglala Sioux Tribe/NRC Staff meeting summaries (all specifically identifying changes to the PA as necessary topics of ongoing NHPA consultation). As such, EPA should increase its involvement and either work to develop an agreement with the affected Tribes, including the Oglala Sioux Tribe, that properly takes into consideration the Tribes' perspectives. In the alternative, EPA should engage in the ongoing discussions between NRC and the Tribes, including the Oglala Sioux Tribe, and work toward a PA that satisfies all parties. The Oglala Sioux Tribe has a formal ordinance in effect regarding consultation, which requires the involvement of the Oglala Sioux Tribal Council. See Ordinance No. 11-10 of the Oglala Sioux Tribal Council of the Oglala Sioux Tribe. Notably, the record developed during the NRC hearing process demonstrates that the proposed Dewey-Burdock site contains significant cultural resources that could be impacted by the project. This fact is made clear even though no meaningful cultural resources survey has been conducted on the property. Even the Augustana Class III archaeological survey upon which EPA attempts to rely recognizes that "the sheer volume of sites documented in the area is noteworthy." Report at page 7.8. Despite this acknowledgement, no competent Sioux cultural resources survey has ever been conducted on the site.</p> <p>The NRC hearing record demonstrates that EPA simply cannot rely on the Powertech-produced Class III archaeological survey for purposes of identifying impacts to cultural resource so as to satisfy its environmental impact review or NHPA obligations. Powertech candidly admits "that identifying religious or culturally significant properties in a project area is entirely reliant of the Tribes themselves and the special expertise of the Tribal cultural practitioners.... Simply put, entities such as NRC or Powertech are not equipped with the Tribe-specific knowledge and traditions to adequately instruct a specific Tribe using 'proper scientific expertise' on this subject." See attached Powertech Opening Statement at 34. The record and testimony contains no evidence that NRC Staff successfully equipped itself or acquired the necessary resources to meet NRC's NEPA duties involving religious and cultural resources. The primary reliance by EPA on the Augustana study is not supportable — particularly given the testimony at the NRC hearing. Dr. Hannus, who lead the Augustana study at the behest of the applicant admitted that his team is not "in any way qualified to be conducting TCP surveys" and further conceded that given the heightened cultural issues of the Sioux Tribes that "there will be sites that will need to be addressed archaeologically and there will be probably sites that need to be addressed as traditional cultural properties." See attached August 19, 2014 Transcript at p. 858, lines 4-8; 12-20. See also August 19, 2014 Transcript at p. 859, lines 18-24 (Dr. Hannus) ("And again, that really should clearly, I think,</p>

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			<p>show us that for us to then be able to make some kind of in roads ourselves, being not of Native background, to identification of sites that are traditional cultural properties that have a tie to spirituality and so on, it is not in our purview to do that.”).</p> <p>Applicant witness Dr. Luhman reiterated this point, confirming that “a traditional Level 3 survey may, in fact, encounter some resources that would be associated with Native American groups or which they would identify. But, they wouldn’t necessarily identify all of the resources primarily because some of the knowledge is not available to those conducting the Level 3 survey. That would be provided by the Native American groups themselves.” August 19, 2014 Transcript at p. 762, line 24 to p.763, line 6. See also, August 19, 2014 Transcript at p. 764, lines 14-18 (OST witness Mr. Mesteth) (“[w]e’re the ones that are the experts, not the archaeologists. They make assumptions and hypotheses about our cultural ways and it’s not accurate. Some of the information is not accurate. And that’s why we object in certain situations.”); p. 765, line 25 to p. 766, line 9 (Mr. Mesteth).</p> <p>Indeed, Dr. Hannus testified that his office has never worked on any projects that considered the cultural resources at a site. August 19, 2014 Transcript at p. 843, lines 4-7. Despite this fact, NRC Staff witness Dr. Luhman testified that NRC Staff relied on Augustana to conduct all of the initial and follow up field survey work at the site, with the exception of the three non-Sioux tribes that submitted reports. August 19, 2014 Transcript at p. 818, lines19-22.</p> <p>Upon the Sioux Tribes’ request as early as 2011 that cultural resource surveys be conducted at the site, NRC Staff prompted the applicant to bring in Dr. Sabastian and her firm to coordinate this review. August 19, 2014 Transcript at p. 784, lines 20-25 (Dr. Sabastian). However, Dr. Sabastian also testified that she also has never been involved in any kind of “actual physical on-the-ground TCP survey-kind of thing that we’re talking about.” August 19, 2014 Transcript at p. 846, lines 9-21.</p> <p>Lastly, Mr. Fosha testified that he worked with the applicant and Augustana “from the very start of the project, so the bulk of this material is a result of myself reviewing what Augustana College had been doing in the field.” August 19, 2014 Transcript at p. 865, lines 3-6. Mr. Fosha testified that he met with the applicant and between them discussed methods for identification of sites and the methods and steps to take “throughout the process,” but only related to the State of South Dakota permit, and having “nothing to do with the NRC permit or anything like that” — even remarking that “up until the point where Augustana was nearly finished I was the only review agency on this project.” August 19, 2014 Transcript at p. 865, line 23 to p. 866, line 5. Despite Mr. Fosha being the only person giving any direction to Dr. Hannus’ Augustana team, Mr. Fosha testified that his experience and focus was solely “the field of archaeology” and not culturally as to the concerns of the Tribes. August 19, 2014 Transcript at p. 867, lines 14-20.</p> <p>The only NRC Staff or applicant witness that testified to having any experience in conducting cultural resource field surveys was NRC Staff witness Dr. Luhman. However, as stated, Dr. Luhman admitted to relying exclusively on Augustana for both the initial field work and the follow up field studies, even though Dr. Hannus’ testimony had confirmed that Augustana had no culturally relevant experience. August 19, 2014 Transcript at p. 818, lines19-22 (Dr. Luhman). Dr. Luhman did testify that “in those projects in which I have been involved [a cultural survey] it is typically that [the Tribes] are working alongside with the archaeological survey team as they are going about doing the survey. It could be in the preliminary stages of doing the generalized recognizance (sic) of the project area. Oftentimes the federal agency and other parties will be along that process so that there can be discussions while out in the field, and these are for sometimes very large projects. But in my experience it</p>

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			<p>typically is at the same time when there is an ongoing consultative and survey process.” August 19, 2014 Transcript at p. 836, line 18 to p. 837, line 2.</p> <p>Consistent with the admitted lack of any culturally relevant experience or focus by any of the prior analysts in reviewing sites for cultural resource impacts, at the live hearing NRC Staff witness Ms. Yilma admitted that no written cultural resources analysis prepared during any part of the NEPA analysis included any comments or reports from any Sioux Tribes. August 19, 2014 Transcript at p. 821, lines 3-7; <i>id.</i> at p. 875, lines 6-11. This is despite testimony from NRC Staff witness Ms. Yilma as to the Staff’s recognition of the importance of the area to the Sioux from a cultural perspective from the earliest stages of the application review stage. August 19, 2014 Transcript at p. 774, line 21 to p. 775, line 1. See also, August 19, 2014 Transcript at p. 771, lines 1-7 (Ms. Yilma). NRC Staff witness Ms. Yilma also testified as to the importance and focus at least as early as 2011 by both the Sioux Tribes and within NRC Staff on the need for culturally-based field surveys in order to fulfill the NEPA and NHPA requirements. August 19, 2014 Transcript at p. 776, line 22 to p. 777, line 3; p. 790, lines 1-17. Indeed, NRC Staff witness Ms. Yilma testified</p> <p>that after meeting in 2011 with the Oglala Sioux, Standing Rock Sioux, Flandreau Santee Sioux, Sisseton Wahpeton (Sioux), Cheyenne River Sioux, and Rosebud Sioux (see August 19, 2014 Transcript at p. 810, lines 16-22), NRC Staff specifically deliberated about conducting an ethnographic study of the site to ensure incorporation of Sioux cultural and historic perspectives, but “the ultimate decision was instead of an ethnographic study a field survey was necessary, so we focused our attention on the field survey approach.” August 19, 2014 Transcript at p. 846 line 22 to 847, lines 8. Despite admitting that it was “necessary” to the analysis, no cultural resources review or field study incorporating any Sioux cultural expertise was ever conducted at the site or incorporated into any NEPA document. August 19, 2014 Transcript at p. 821, lines 3-7 (Ms. Yilma); <i>id.</i> at p. 875, lines 6-11 (Ms. Yilma).</p> <p>Taken together, this testimony and evidence establishes NRC Staff’s failure to conduct the necessary hard look under NEPA, as by their own admission, despite it being necessary to the analysis, no Sioux comments or reports were incorporated into the cultural resources reviews, and none of the parties that conducted any cultural review of the site, including field surveys, were trained, experienced, or competent to review or survey the area for, let alone determine impacts from the project to, the cultural resources of Sioux origin. In answering a follow-up question by Chairman Froehlich to Dr. Hannus asking whether, as Dr. Sabastian had testified, did Dr. Hannus believe that identification of Sioux traditional sites “depends on the knowledge and traditional culture practitioners,” Dr. Hannus responded: “Yes, I mean, I absolutely would have to, because there isn’t any other way the framework that I work within functions.” August 19, 2014 Transcript at p. 860, lines 1-8. In short, admissions and testimony confirm that NRC Staff deferred to the applicant’s unqualified consultants, while rejecting proposals to incorporate Sioux cultural expertise.</p> <p>As a result of Powertech’s and NRC Staff’s coordinated inability to fulfill their obligations to properly ensure a competent cultural resources survey of the Dewey-Burdock site before approvals are given and the aquifers are impacted, EPA cannot rely on the NRC’s NEPA documents to assess the cultural resources impacts of the proposed mine. Instead, the scope of EPA’s consultation must match the scope of the UIC duties, which apply to the full life of the proposed mine, not the initial set of NRC-approved segments. Similarly, because NRC Staff has failed to fulfill its government-to-government consultation duties under the NHPA, EPA also cannot rely on the PA or any other NRC Staff consultation to fulfill its own obligations under the NHPA. Rather, EPA must delay any</p>

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			permitting action until a fully competent cultural resources survey is conducted and the Tribe and the public has an opportunity to review and comment on the potential impacts to those important resources. Additionally, EPA should reject the PA as inadequate and engage in meaningful and good-faith consultation with the Oglala Sioux Tribe professional staff and Tribal Council in order to ensure that, in coordination with the Tribe, all cultural resources are identified, impacts are assessed and mitigation measures are developed and implemented.
00555	Dave Archambault II	Standing Rock Sioux Tribe	(2) The Nuclear Regulatory Commission failed to conduct a good faith identification of traditional cultural properties in the project area, in violation of National Historic Preservation Act section 106 and 36 CFR §800.2(C)(2)(ii); and
00555	Dave Archambault II	Standing Rock Sioux Tribe	<p>2. The Nuclear Regulatory Commission Failed to Properly Identify Traditional Cultural Properties</p> <p>Section 106 of the National Historic Preservation Act establishes requirements for the identification of the impacts of a federal undertaking on cultural resources. Section 106 requires that:</p> <p>The head of any Federal agency ... prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property.</p> <p>(54 U.S.C. §306108).</p> <p>The identification efforts of historic properties under section 106 must include identification of traditional cultural properties of Indian Tribes in the area of potential effects. Under section 101(d)(6) of the act, Native American traditional cultural properties are eligible for inclusion on the National Registry:</p> <p>Property of traditional religious and cultural importance to an Indian Tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register (of Historic Places).</p> <p>(54 U.S.C. §302706(a)).</p> <p>The section 106 regulations prescribe the process for identifying historic properties and traditional cultural properties; evaluating their eligibility for the National Register; determining whether there are adverse impacts and resolving or mitigating those impacts.</p> <p>(36 CFR Part 800).</p> <p>The statute requires consultation with Indian Tribes on the identification of the traditional cultural properties which may be impacted by a federal undertaking:</p> <p>... a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to property</p> <p>(54 U.S.C. §302706(a)).</p> <p>The regulations explain:</p> <p>Section 101(d)(6)(B) of the act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking.... The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional, religious and</p>

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			<p>cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects.</p> <p>36 CFR §800.2(c)(ii).</p> <p>The role of Tribes is further delineated for the identification of traditional cultural properties in section 4 of the regulations:</p> <p>In consultation with the SHPO/THPO, the agency official shall: (d)etermine and document the area of potential effects ... (and) Gather information from any Indian tribe or Native Hawaiian organization ... to assist in identifying properties, including those located off tribal lands, which may be of religious and cultural significance to them.</p> <p>36 CFR §800.4(a).</p> <p>The consultation and identification efforts must be reasonable and in good faith:</p> <p>... in consultation with the ... THPO, and any Indian tribe or Native Hawaiian organization that might attach religious and cultural significance to properties within the area of potential effects, the agency official shall take the steps necessary to identify historic properties within the area of potential effects. The agency official shall make a reasonable and good faith effort to carry out appropriate identification efforts, (to include) ... consultation.</p> <p>36 CFR §800.4(b).</p> <p>The EPA administrative record does not demonstrate compliance with these requirements. To the contrary, the NRC, as lead agency, in cooperation with PowerTech, refused to consult in good faith with the Tribes as required by the section 106 regulations. 36 CFR §800.3(f)(2). Early discussions about Tribal participation in the identification of traditional cultural properties went nowhere. NRC and PowerTech refused to establish a meaningful area of potential effects (APE) in consultation with the Tribes. They were uncooperative and unresponsive in the limited discussions on a scope of work and funding for Tribal traditional cultural properties surveys.</p> <p>As a result, the NRC failed to properly identify traditional cultural properties that are directly or indirectly impacted by the proposed Dewey Burdock UIC wells in the APE, in violation of NHPA section 101(d)(6)(B), and 36 CFR §§800.2(c)(ii) & 800.4(a) & (b).</p> <p>The Standing Rock Sioux Tribe THPO documented our Tribe's fruitless efforts for the requisite section 106 consultation and Tribal role in the survey of traditional cultural properties in the sacred Black Hills. The Standing Rock Sioux Tribal Historic Preservation Office sent correspondence dated February 4, 2014 to provide comments on a draft Programmatic Agreement. None of the comments were incorporated into the Final PA, and the stated concerns with the section 106 process were totally ignored. Correspondence from our THPO dated November 5, 2012 and August 30, 2011 likewise received no response. There was no consultation on the identification of TCPs.</p> <p>As stated above, the Black Hills are sacred Treaty lands of the Standing Rock Sioux Tribe under the 1868 Fort Laramie Treaty. The NRC actually attempted to rely on consultations with the Three Affiliated Tribes of Fort Berthold and Turtle Mountain Band of Chippewa Indians for the consultation on TCPs of the Ojibwe Sakowin Oyate. The consultation requirement applies to "any Indian tribe that attaches religious and cultural significance to historic properties" (36 CFR §800.2(c)(2)(ii)) or "located on ancestral, (or) aboriginal. .. lands." (36 CFR</p>

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			<p>§800.2(c)(2)(ii)). For the Black Hills, that applies to the Oceti Sakowin Oyate and Northern Cheyenne Nation. The NRC cannot simply select any Indian Tribe willing to consult on its project. That is what occurred with Dewey Burdock.</p> <p>The Final Programmatic Agreement acknowledges but mis-portrays and attempts to minimize the significance of the lack of good faith efforts in identifying TCPs. It states on page 3:</p> <p>... the parties were unable to reach agreement on the scope and the cost of the Tribal survey.</p> <p>That does not obviate the need for compliance with the section 106 regulations. Nevertheless, the NRC refused to engage in the good faith consultation and identification efforts that are required. Ultimately, the NRC failed to adequately consult with the Standing Rock Sioux Tribe THPO in the identification and evaluation of Traditional Cultural Properties in the Dewey Burdock project area. Consequently, the EPA must deny the PowerTech UIC permit application.</p>
07459 (Valentine hearing)	Ex. 6 Personal Privacy (PP)	Individual	<p>And I'd also like to ask that there be a full cultural and historical survey of the area to determine any culturally significant or spiritually significant sites to our tribe and other local tribes.</p> <p>And I would also like that that tribal consultation be defined by the local tribal -- tribal people, not defined by the laws and regulations that are set out for a tribal consultation.</p> <p>And I'd also like to ask that the EPA comply with the Section 106 of the National Historic Preservation law, which is the NHPA law, which also defines and clearly states that there must be formal consultation with local tribes.</p>
07460 (5/8 Rapid City hearing)		Individual	<p>We are also requesting, as someone from Standing Rock, to have true and meaningful consultation with tribes, not to just sit there and listen, but to have true, meaningful consultation with tribally approved archaeologists and tribally approved surveyors, because (Speaking in Indigenous language), the Black Hills belong to us.</p> <p>They are historical, they are spiritually significant to our people, and we stand in opposition of the uranium mine. Mni Wiconi. Water is life.</p>
07461 (5/9 Rapid City hearing)		Individual	<p>The other reason is that the He Sapa, or the Black Hills, is treaty territory. Under the 1851/1868 Fort Laramie Treaty and under law, it is mandated to consult with the tribal governments as government-to-government relations</p> <p>This includes following the National Historical Preservation Act rules and regulations with the tribes. However, South Dakota and federal agencies involved in permitting this uranium mining have continuously ignored tribal nations and their expert testimony regarding cultural properties and sacred sites.</p>
8120	Anonymous	Northern Cheyenne Tribal Historic Preservation Office	<p>The Northern Cheyenne Tribal Historic Preservation Office is writing in regards to the permit request for aquifer exemption for the Dewey-Burdock uranium in-situ project. The aquifer's are essential to the wellbeing and continued cultural connection area tribes and tribes with ancestral ties to the area continue to maintain. A decision to approve this permit would cause irreparable harm to the cultural landscapes and quality drinking water that is pertinent to the livelihood of humans, plant and wildlife resources of the land. It is inevitable that the waste fluids will eventually seep into the soil and contaminate the aquifers. Additionally, cultural resources located on the landscapes where mining activities occur are in danger and are threatened by a foreseeable adverse impact to all elements that define the cultural landscape. Finally, it is essential that all consulting tribes are given the opportunity to participate in the identification of cultural resources that have not</p>

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			been identified by tribes, as well as to address the implications this project will have on various resources of religious and cultural significance to their nation.
00523	Harold Frazier	Cheyenne River Sioux Tribe	* Historic, spiritual, and cultural resources: There are numerous sites of historic, spiritual, and cultural significance to the Tribe throughout the Tribe's large aboriginal territory, but especially within the boundaries of the lands reserved to the Tribe in the <i>Treaty of Fort Laramie with the Sioux, Etc.</i> , 11 Stat. 749 (Sep. 17, 1851).
8291	Charmaine White Face	Defenders of the Black Hills	<p>2. Cultural Resources</p> <p>In their Request for Determination of Special, Exceptional, Critical or Unique Lands and Intent to Operate on Aug. 20, 2008, to the SD Department of Environment and Natural Resources regarding Cultural Resources in the land area where they wish to conduct their ISR mining operation, Powertech/ Azarga, on page 10 stated that a Level III Cultural Resources Evaluation was conducted by the Archaeology Laboratory, Augustana College, Sioux Falls, SD. The report from Archaeology Laboratory states:</p> <p>"The small number of Euroamerican sites documented was not unanticipated given the peripheral nature of the project area in relation to the Black Hills proper. The disparity existing between the number of historic [since 1874 -Author's note] and prehistoric sites [non-Euroamerican -Author's note] observed in 'the project area is also not unexpected; however, the sheer volume of sites documented in the area is noteworthy. [Author's emphasis] The land evaluated as part of the Level III cultural resources evaluation has an average site density of approximately 1 site per 8.1 acres. Even greater site densities were reported in 2000 during the investigation of immediately adjacent land parcels for the Dacotah Cement/land exchange (Winham et al., 2001). This indicates that the permit area is not unique, in regards to the number of documented sites, and is typical of the periphery of the Black Hills."</p> <p>The Cultural Resources that are not Euroamerican and considered prehistoric in the planned mining area belong to Indigenous peoples including members of the Sioux nation. This planned mining area was an ancient burial ground not recorded by Euroamericans but passed down through the generations in oral traditions. These cultural resources would also include teepee rings, fire circles and sweat lodge areas. The indigenous families or clans traveled to this area to bury the remains of their deceased, or place them in trees, depending on the peoples' traditions. During this process, they would also need to stay in the area a few days; hence the teepee rings and fire circles. Ceremonies were also held in certain places and our organization discovered a sacred site that is located within the mapped mining area. However, this information has not been made public due to the protection of this site from exploitation.</p> <p>Although our organization submitted photographs of gravesites in this planned mining area to both the Nuclear Regulatory Commission and the SD Minerals and Environment with our recommendation that the land area must not be disturbed, our recommendation was</p>

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			<p>totally ignored. In addition, this author was with a group from the SD Department of Environment and Natural Resources when cultural resources were driven over by vehicles, and people walked right over cultural resources without noticing them and their locations. There is a large number of prehistoric cultural resources in this proposed mining area that must be protected as they must not be disturbed nor can they be mitigated. Many other places in the world prize their areas of ancient treasures that are irreplaceable, and those countries protect and preserve such areas to the best of their ability. This proposed mining area is a part of just such a rare treasure and must be protected and preserved.</p> <p>Recommendation: An extensive cultural survey needs to be completed by members of the Sioux Nation who know and practice our old traditions and can show exactly where these cultural resources are located if they are permitted to do so.</p>
00294	Ex. 6 Personal Privacy (PP)	Individual	<p>Direct impacts to cultural resources are a significant topic that should be discussed in the policy. According to the Tribal Energy and Environmental Information Clearinghouse, increases in human access and disturbances can result in unauthorized removal of artifacts around the site (Tribal Energy and Environmental Information Clearinghouse, 2017).</p>
00523	Harold Frazier	Cheyenne River Sioux Tribe	<p>b. The Dewey-Burdock Uranium Mine Poses a Serious Threat to the Tribe's Cultural Resources</p> <p>The site of the proposed Dewey-Burdock Uranium Mine is within the Tribe's 1851 territory. Specifically it is in the vicinity of the Black Hills, among the most sacred sites to the Lakota people. Our people lived in this area, hunted in this area, and made religious pilgrimages in this area from time immemorial. Our Tribal Historic Preservation Officer advises that the site of the proposed mine has the potential to contain numerous sites of cultural and spiritual significance. While it is our understanding that some efforts have been made to identify cultural resources in the project area, the EPA has not consulted with the Tribe pursuant to the National Historic Preservation Act.</p> <p>...</p> <p>2. The EPA must engage in meaningful government-to-government consultation with the Tribe</p> <p>As described herein, the Underground Injection Control Draft Area Permit and Proposed Aquifer Exemption decision for the Dewey-Burdock Uranium In-Situ Recovery Site poses serious threats to the Tribe's reserved water rights, hunting and fishing rights, cultural and spiritual sites, and religious exercise in ways that implicate federal statutes and treaty rights. As further described herein, as a function of its fiduciary duty to the Tribe and as a matter of federal law, the EPA must engage in meaningful government-to-government consultation with the Tribe on the issues discussed herein and other issues that may arise.</p> <p>...</p> <p>The Cheyenne River Sioux Reservation is located wholly within the exterior boundaries of the State of South Dakota. (A map showing the location of the Tribe's Reservation is enclosed herewith.) However, our rights and trust resources extend beyond our Reservation borders as a matter of federal law. As set forth herein, the Proposed Permit will affect our reserved water rights, our treaty rights, and our historic, spiritual, and cultural resources. For this reason, the EPA must consult with the Tribe on the Proposed Permit.</p>

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			<p>...</p> <p>The federal government has further obligations to tribes under the National Historic Preservation Act ("NHP A") and the Religious Freedom Restoration Act ("RFRA"). The NHPA was enacted to preserve historic resources in the midst of modern projects and requires agencies to fully consider the effects of its actions on historic, cultural, and sacred sites. Section 106 of the NHP A requires that prior to issuance of any federal funding, permit, or license, agencies must take into consideration the effects of that "undertaking" on historic properties. 54 U.S.C. § 306108; 36 C.F.R. § 800.1. The Section 106 process also requires consultation between agencies and Indian Tribes on federally-funded or authorized "undertakings" that could affect sites that are on, or could be eligible for, listing in the National Register, including sites that are culturally significant to Indian Tribes. 54 U.S.C. § 302706. An agency official must "ensure" that the process provides Tribes with "a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties ... articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." 36 C.F.R. § 800.2(c)(H)(A). This requirement imposes on agencies a "reasonable and good faith effort" by agencies to consult with Tribes in a "manner respectful of tribal sovereignty." <i>Id.</i> 36 C.F.R. § 800.2(c)(2)(ii)(B); <i>see also id.</i> § 800.3(-f) (any Tribe that "requests in writing to be a consulting party shall be one").</p> <p>...</p> <p>Significantly, the EPA along with several other departments of the United States Federal Government, entered into a Memorandum of Understanding on Interagency Coordination and Collaboration for the Protection of Indian Sacred Sites on September 23, 2016. The Memorandum acknowledges that federal agencies hold in trust many culturally important sites held sacred by Indian tribes, and federal agencies are responsible for analyzing the potential effects of agency projects carried out, funded, or permitted on historic properties of traditional cultural and religious importance to Indian tribes including sacred sites. Additionally, international law, treaties, and jurisprudence has repeatedly affirmed the right of Free Prior Informed Consent. <i>See Declaration on the Rights of Indigenous People</i>, art. 10, United Nations (Mar. 2008). The purpose of Free Prior Informed Consent is to establish bottom up participation and consultation of an Indigenous population prior to the beginning of a development on ancestral land or using resources within the Indigenous population's territory. <i>Id.</i></p> <p>Finally, the EPA must be aware that consultation required under the National Historic Preservation Act concerning cultural and spiritual resources is not sufficient to meet the United States' obligation to consult about reserved water rights, treaty rights, or other religious freedom issues</p>
8103	Anonymous	Individual	<p>According to the Associated Press, "On July 20, [2018] just 18 days after the Nuclear Regulatory Commission abandoned its effort to conduct a cultural resources survey, the appeals courts three-judge panel issued an opinion. The opinion was filed by Chief Judge Merrick Garland....</p> <p>Garlands opinion said the Nuclear Regulatory Commission violated the National Environmental Policy Act which is known by the acronym NEPA when the commission decided to leave Powertechs license in effect after acknowledging the lack of an adequate cultural resources survey. The opinion further noted that the commissions decision in the Powertech matter had</p>

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			<p>not been a one-off but appeared to be settled practice.</p> <p>'The agency's decision in this case and its apparent practice are contrary to NEPA,' Garland's opinion said. 'The statute's requirement that a detailed environmental impact statement be made for a proposed action makes clear that agencies must take the required hard look before taking that action. ('Court, regulators clash over uranium project in South Dakota'</p> <p>By Seth Tupper. August 13, 2018).</p> <p>Thus, not only is Powertech proposing to destroy over 2,500 acres of the Black Hills in Lakota territory, and proposing to contaminate the aquifers that underlie that property, but also to ignore the cultural resources that would also be destroyed by the mining activities.</p> <p>Powertech must not receive approval for this Dewey-Burdock mining project. It must be rejected.</p>
8050 (10/5 Hot Springs hearing)	Ex. 6 Personal Privacy (PP)	Individual	<p>And also, you work to ensure that federal laws protect human health and the environment and are administered and enforced fairly, effectively, and as Congress intended.</p> <p>Well, if that's true, and it doesn't matter what I say and you're only doing what other people in your group or what the feds tell you to do, then basically the NRC, their cultural resources review was not deemed sufficient by a federal court. It's been, like, illegal. It's, hey, this is illegal. It's documented, this is not sufficient.</p>
00546	Troy S Weston	Oglala Sioux Tribe	<p>Review of EPA's impact reviews reveals that disclosure and analysis of impacts are insufficient where the mitigation analysis consists largely, if not exclusively, of a list of plans to be developed later, outside the permitting process and the public review. For instance, with regard to the cultural resources impacts, the agency concedes that consultation is not complete, although that is the process through which impacts are assessed and mitigated. As discussed herein, reliance on a discredited Programmatic Agreement ("PA") is insufficient. Indeed, the PA itself simply defers mitigation planning to some future time</p> <p>The as-yet developed mitigation relied upon in the EPA's analysis even includes such basic and critical things as post-permit issuance pump tests and hydrologic wellfield packages to determine the ability to contain mining fluids and future consultation under the National Historic Preservation Act to develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize or mitigate adverse effects on historic properties. These represent fundamental aspects and impacts of the mining and in order to assess the impacts of the mine proposal cannot be simply deferred to a later date.</p>
8050 (10/5 Hot Springs hearing)	Ex. 6 Personal Privacy (PP)	Individual	<p>And the last contention with the NRC of the Oglala Sioux Tribe is the cultural -- cultural resources survey. And one of the things is, there is a need for a competent cultural resources survey.</p> <p>It has to be conducted by qualified persons who have the knowledge and the expertise to identify significant -- culturally significant and sacred sites.</p>
Letter		OST THPO	The thoughts provided in these comments will stress the continued need and

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			<p>request for a hard look cultural survey. These comments will also offer reasons the people of the Oglala Sioux Tribe hold the lands and resources sacred.</p> <p>It is vital the Oglala Sioux Tribe is granted the opportunity to conduct a Traditional Cultural Survey of the Dewey-Burdock uranium mine project and take another look at the previous findings of the archeological survey in place.</p> <p>The approval of the 1992 amendments of the National Historic Preservation act established Section 101 (d) (6) (A) & (B) that allow the Indian Tribes to identify historic properties of religious and cultural significance. The Standards for developing environmental documents to comply with Section 106, Indian Tribes must be consulted on the effects of the undertakings on historical properties. The Federal agency who is taking the lead in the endeavor won't be able to make a knowledgeable decision if the Oglala Sioux Tribe is not allowed to make a class III hard look survey and identify cultural and historic properties that are important to what the tribe holds sacred.</p> <p>The Oglala Sioux Tribe maintains they were not afforded the opportunity to discuss the effects the Dewey-Burdock project has had on the cultural and religious properties that are considered significant. The archeologist(s) who conduct the surveys for the companies of drilling and mining projects do not have the knowledge of the connection the Lakota have to the water, land, air, or the cultural environment. The archeologist(s) are not able to identify what is important to the Lakota people, they cannot identify our stone features, cultural sites, and sacred landscapes that are attached to water. The knowledge of these and the ceremonies were and are passed from one generation to the next through oral interpretations. There are no individuals in modern science or technology who have the ability to describe or interpret this knowledge. The archeologist who are doing the surveys for the Dewey-Burdock expansion and other mining projects fall into this category of the uninformed.</p> <p>To be able to identify and catalogue potential items of cultural, historical, and religious significance to the Oglala Sioux Tribe, a thorough survey needs to be conducted by person who are knowledgeable in aspects of what is important to the Tribe. The survey needs to be conducted by members of the Oglala Sioux Tribe</p>

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			with a methodology developed for these purposes.
8143	Anonymous	Individual	The EPA must do its own full evaluation of the proposed Dewey-Burdock project and cannot "piggyback" its evaluation on the work done by other state or federal agencies. The EPA must require Powertech/Azarga to properly plug all historic boreholes and reclaim historic abandoned mines in the project area before they issue any future permits. Failing to do this would allow a continued dangerous situation for our aquifers, rivers, reservoirs, and landowners. Per Article Six of the U.S. Constitution, treaties are the "supreme law of the land." The EPA cannot just brush off this fact. The EPA must consider potential negative impacts to human health from a cultural perspective, as well as from a technical/scientific perspective. The EPA said that the Nuclear Regulatory Commission's review of cultural resources "appears sufficient." Actually, this review has been ruled "not sufficient" by a federal court. The EPA should perform a cultural resource review that follows federal law.
00015	ANGRY AMERICAN	Individual	A full survey of cultural and historical sites is needed before mining or deep disposal is allowed. Cultural and historical sites must be protected.
00024	Ex. 6 Personal Privacy (PP)	Individual	Subject: Re: Dewey-Burdock templates [...] I urge that a full survey of cultural and historical sites be conducted prior to mining or deep disposal and all efforts to protect cultural and historical sites.
00174		Individual	Subject: Opposition to Dewey Burdock Uranium Aquifer Mining [...] The National Historic Preservation Act requires tribal consultation. The current administration does not respect America's indigenous people and the agreements we have with them. I have no faith that this administration will adhere to the law, democratic principles, or human decency in their handling of the Tribe's concerns
00188		Individual	Subject: No Uranium in treaty territory [...] 3) The EPA is obligated under the National Historic Preservation Act to consult with the Tribes to identify the potential effects of the project on traditional cultural places, historic, and sacred sites. As you are probably aware, this current administration is openly dismissive and even hostile towards the interests of America's indigenous peoples. We cannot expect there will be a good faith reckoning of the Tribe's concerns. Therefore, for all these concerns, and more, I must register my opposition to the proposal for ISR activities in the area. Please deny the permit.
00230		Individual	So I urge you to listen, as many of the speakers at the hearings have already said. Listen to the people here when you make your decisions. Seek the input of the native tribes who occupy and know this area, and truly listen to them. Listen to your own hearts: what matters to you? Does your children's future matter to you, or does money matter to you? Which is going to last longer? Which is something you want to look back on at the end of your life?
00244		Individual	- that there is tribally defined consultation [...]

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			- that there are fully tribally approved archeological and cultural surveys
00272	Ex. 6 Personal Privacy (PP)	Individual	A full survey of cultural and historical sites is needed before mining or deep disposal is allowed. Cultural and historical sites must be protected.
00280		Individual	A full survey of cultural and historical sites is needed before mining or deep disposal is allowed. Cultural and historical sites must be protected. The black hills in particular are a site of extreme cultural and historic significance and should not be mined.
00287		Individual	PLEASE remember to have a tribally defined consultation in addition to FULL tribally approved archeological and cultural surveys !!!
00290		Individual	A full survey of cultural and historical sites is needed before mining or deep disposal is allowed. Cultural and historical sites must be protected.
00389		Individual	A full survey of cultural and historical sites is needed before any mining or deep disposal is allowed. Cultural and historical sites must be protected. It should also be noted that the proposed mining area falls within the boundary of the Fort Laramie Treaty of 1868. Full engagement over this issue with any tribes who are party to that treaty is essential. The US constitution states that treaties are the supreme law of the land.
00394		Individual	A full survey of cultural and historical sites is needed before mining or deep disposals allowed. Cultural and historical sites must be protected
00469		Individual	• A full survey of cultural and historical sites is needed before mining or deep disposal is allowed. Cultural and historical sites must be protected.
00470		Individual	Have genuine consultation with the tribes and tribal approved archaeological and cultural surveys!
00472		Individual	The Tribal sovereignty and cultural issues have not been genuinely addressed. ... 3) GENUINE TRIBAL CONSULTATION SHOULD OCCUR 4) TRIBAL APPROVED & ARCHAEOLOGICAL SURVEYS!
00489		Individual	These [cultural and historical surveys] must be tribal approved!
00495		Individual	3) Tribally defined consultation Full tribal approved surveys

Comments on NHPA Identified by Lucita

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00160	Ex. 6 Personal Privacy (PP)	Individual	There are still plenty of agreements that must, but may not be reached with these tribes and as the Nuclear Regulatory Commission states, "The NRC identified 23 Native American tribes that attach historical, cultural, and religious significance to sites within the Dewey-Burdock ISR Project area" (NRC, 2014). Twenty-three is a very large number and they should all have a voice that is heard and acknowledged by our democratic system to

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			prevent this project from occurring. The value of historic land and loss of culture cannot be made up with money.
8050 (10/5 Hot Springs hearing)	Ex. 6 Personal Privacy (PP)	Individual	My name is Debra White Plume. I am Oglala Lakota and Cheyenne from the beautiful Pine Ridge homeland. I am from the 1851 and 1868 treaty territory lands and waters of ancestral territory, great cultural significance. Your process wants us to identify sacred sites, but Mother Earth is a sacred site. We have sacred places here which correlate to star constellations. That's how old we are. We can't name for you a specific date. It goes back too far.
8131	Anonymous	Individual	If that's not enough, our Native friends say there has been no investigation into what could be a sacred site with graves and sacred objects buried here.
8136	Anonymous	Individual	Additionally, it is unconscionable to think of doing this without protecting areas sacred to the Lakota, and no authentic examination this area has been done to show where the areas might be. Stop this project NOW!
00396	N/A	Sicangu Lakota Treaty Council	<p>SICANGU LAKOTA TREATY COUNCIL RESOLUTION NO. 2017-02</p> <p>...</p> <p>WHEREAS, the Sicangu Lakota Treaty Council to consider and protect the Sicangu Lakota Way of Life pertaining to cultural practices and sacred sites within the treaty boundaries makes the following recommendation, and</p> <p>...</p> <p>WHEREAS, the National Historic Preservation Act (NHPA) Regulations Implementing Section 106 (36 CFR Part 800) The regulations implementing Section 106 of the NHPA require consultation with Indian tribes throughout the historic preservation review process. Federal agencies are required to consult with Indian tribes on a government-to-government basis, in a manner that is respectful of tribal sovereignty. The regulations require federal agencies to acknowledge the special expertise of Indian tribes in determining which historic properties are of religious and cultural significance to them, and</p> <p>WHEREAS, the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 , et. seq.) NAGPRA requires consultations with Indian tribes, traditional religious leaders and lineal descendants of Native Americans regarding the treatment and disposition of specific kinds of human remains, funerary objects, sacred objects and other items. Under the Act, consultation is required under certain circumstances, including those identified in Sections 3002(c), 3002(d), 3003, 3004, and 3005, and</p> <p>...</p> <p>THEREFORE, BE IT RESOLVED, that the Sicangu Lakota Treaty Council hereby strongly urges and requests the EPA to deny both permits and any future permit applications relating to Uranium mining or the extraction of minerals or rare earth elements.</p> <p>CERTIFICATION</p> <p>This is to certify that the above Resolution No. 2017-02 was duly passed by the Sicangu Lakota Treaty Council on May 2, 2017, Motion to approve by Shane Red Hawk. Second by Delano Clairmont with a vote of Four (4) in</p>

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			<p>favor, Zero (0) opposed, and One (1) not voting. The said resolution was adopted pursuant to authority vested in the Sicangu Lakota Treaty Council under the laws of the Rosebud Sioux Tribe. A quorum was present.</p> <p>ATTEST:</p> <p>Fremont Fallis - Chairman</p> <p>Sam High Crane - Vice-Chairman</p>
00525	Harold Frazier	Cheyenne River Sioux Tribe	<p>As the Chairman of the Cheyenne River Sioux Tribe ("Tribe"), I am contacting the U.S. Environmental Protection Agency ("EPA") to submit the Tribe's official comments on the EPA's Region 8 Underground Injection Control Draft Area Permit and Proposed Aquifer Exemption decision for Dewey-Burdock Uranium In-Situ Recovery Site.</p> <p>• Historic, spiritual, and cultural resources: There are numerous sites of historic, spiritual, and cultural significance to the Tribe throughout the Tribe's large aboriginal territory, but especially within the boundaries of the lands reserved to the Tribe in the <i>Treaty of Fort Laramie with the Sioux, Etc.</i>, 11 Stat. 749 (Sep. 17, 1851). Furthermore, the Tribe's reserved water rights themselves constitute a spiritual and cultural resource in light of the primary role that water plays in Lakota religious sacraments, which require environmentally and ritually pure water. (A map showing the Tribe's 1851 territory is enclosed herewith.)</p> <p><i>Tribe's Requests Concerning the Underground Injection Control Draft Area Permit and Proposed Aquifer Exemption decision for Dewey-Burdock Uranium In-Situ Recovery Site</i></p> <p>1. The Dewey-Burdock Uranium In Situ Recovery Site Poses a Serious Threat to Tribal Rights that the EPA Must Thoroughly Evaluate</p> <p>The Dewey-Burdock Uranium Mine is proposed to be sited within the Tribe's 1851 territory and in areas that impact aquifers and tributaries that affect Cheyenne River Sioux Reservation lands and waters. As such, the Dewey-Burdock Uranium Mine will have serious impacts on (a) the Tribe's treaty rights and reserved water rights, (b) the Tribe's cultural resources; and (c) the Tribe's religious exercise, as set forth in further detail below.</p>
00537	Nadine Padilla Travis Miller	Native Research Solutions	<p>III. The Federal Government Has a Legally-Recognized Federal Trust Responsibility to Protect Native American Sacred Sites.</p> <p>While the necessary cultural data still needs to be collected and analyzed and the granting of the mine permits is premature without this cultural data, one thing is certain- the federal government has a trust responsibility to protect Native American sacred sites. The National Historic Preservation Act, the Native American Graves Protection and Repatriation Act, the Religious Freedom Restoration Act, and Executive Order No. 13007 all offer protections for Native American sacred sites and weigh in favor of denying the permits.</p> <p>...</p> <p>The goal of tribal consultation is not simply to check a box, or to merely give tribes a chance to be heard. Rather, the core objective is to provide federal decision makers with context, information, and perspectives needed to support informed decisions that actually protect tribal interests</p>

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00031	Ex. 6 Personal Privacy (PP)	Individual	<p>4. Consideration of legal and cultural impacts</p> <p>In addition to the possibility of technology failure, the cultural significance to the area must also be taken into consideration. The Black Hills have been home the The Lakota, or the Sioux tribe, for generations. Because of this, the EPA is required to comply with the National Historic Preservation Act under the EPA's Tribal Policy on Consultation and Coordination with Indian Tribes. These people have been interested in the potential outcomes of the Powertech operation, and as such have requested the EPA provide them with a concise and well researched identification of potential effects of the proposed project. These are historic and sacred lands, and as such the EPA continues to provide the tribe with as much information as possible, however these potential cultural impacts must be weighed against the benefits.</p>
00044		Individual	<p>Other Reasons I object are:</p> <p>The HeSapa, or Black Hills, is Treaty Territory under both the 1851 and 1868 Ft. Laramie and under Law it is mandated to consult with tribal governments as Government to Government Relations. This includes following National Historic Preservation Act rules and regulations with the tribes. However, South Dakota and federal agencies involved in permitting this uranium mining have continuously ignored tribal nations and their expert testimony regarding cultural properties and sacred sites in the target area.</p>
00103		Individual	A full survey of cultural and historical sites is needed before mining or deep disposal is allowed. Cultural and historical sites must be protected.
00106		Individual	...to consult with the Sioux nation before any action, to conduct tribally approved archeological and cultural surveys...
00108		Individual	<ul style="list-style-type: none"> * A full survey of cultural and historical sites is needed before mining or deep disposal is allowed. Cultural and historical sites must be protected. * Tribally defined consultation...
00136		Individual	A full survey of cultural and historical sites is needed before mining or deep disposal is allowed. Cultural and historical sites must be protected.
00164		Individual	I also want tribally defined consultation as well as full tribally approved archeological and cultural surveys done.
00172		Individual	<p>Subject: Permits for Dewey-Burdock Uranium Mine</p> <p>[...]</p> <p>A full survey of cultural and historical sites is needed before mining or deep disposal is allowed. Cultural and historical sites must be protected</p>
00304		Individual	If the EPA were to not consult and coordinate with tribes during the public comment period, then they would be in violation of the National Historic Preservation Act and the Tribal Policy on Consultation and Coordination with Indian Tribes; but EPA has been involving the tribes throughout the process (McClain-Vanderpool, 2017).
00317		Individual	Subject: Re: Urgent Dewey Burdick consultations

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			Hi Miss Shae its me again. So Ive called around and talked to Russell Eagle Bear at the Rosebud Sioux Tribe Historic preservation office, also with Phil Two Eagle from our Treaty Council, they seem to think that the public comment hearings aren't legitimate Tribal consultations. is this true? They seem to think they have never ending time. What is the process for consultation with Tribes? or is this it. Is June 19th the last day of public comment and Tribal consultation? They seem to think they are getting a special invitation or is that what the last letter was? I'm sorry I'm confused. I'd like to know when the last day for our Tribe to consult with the EPA. Thank you for your time. I appreciate it very much.
00519	Lillas Jarding, Ph.D. Jim Woodward Cathe Meyrick Bonnie Gestring Lori Andresen Geoffrey H. Fettus Susan Gordon Randi Spivak Lawrence Novotny Beth Burkhardt Rick Bell	Black Hills Clean Water Alliance	<p>As part of the new process, the EPA should do thorough tribal consultation. The existing documents indicate that this process has barely begun, and yet draft permits have been issued. This makes a mockery of the consultation process, which should be completed well before draft permits are issued, so that the resulting information can be analyzed. The EPA must halt all further action until mutually-satisfactory consultation is completed. All cultural and historical properties must be given adequate protection.</p> <p>[...]</p> <p>The undersigned respectfully request that the EPA stop the permitting processes for the proposed Dewey-Burdock project. At the very least, tribal consultation and a de novo NEPA process are required. At best, the permits and the exemption should be denied.</p>
00522	Virginia Richey	Cheyenne & Arapaho Tribes Tribal Historic Preservation Office	<p>On behalf of the Cheyenne and Arapaho Tribes, thank you for the notice of the referenced project. I have reviewed your Consultation request under section 106 of the National Historic Preservation Act regarding the project proposal and commented as follows:</p> <p>At this time, it is determined to be categorized as No Adverse Effect; however, if at any time during the project implementation inadvertent discoveries are made that reflect evidence of human remains, ceremonial or cultural objects, historical sites such as stone rings, burial mounds, village or battlefield artifacts, please cease work in area of discovery and notify the THPO Office within 72 hours.</p> <p>In addition, if inadvertent discoveries are made; pursuant to Title 36 Code of Federal Regulation Part 800.13, as amended; you will also be required to make arrangements for a professional archaeologist to visit the site of discovery and assess the potential significance of any artifacts or features that were unearth. If needed, we will contact the Tribes NAGPRA representatives.</p> <p>Please contact me at (405) 422-7484 or [HYPERLINK "mailto:vrichey@c-a-tribes.org"], if you have any questions or concerns. Alternate contact is Micah Demery; she can be reached directly at (405) 422-7416 or mdemery@c-a-tribes.org. Thank you again for your notification!</p>
07459 (Valentine hearing)	Ex. 6 Personal Privacy (PP)	Individual	By allowing this permit, you're going to desecrate what was there before. We have burial grounds. We have ceremonial sites. We have campsites. And our people still trek to the Black Hills to pray, even today.

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07460 (5/8 Rapid City hearing)	Ex. 6 Personal Privacy (PP)	Individual	Secondly, there is -- the entire area of the Black Hills is very, very important, and it's very -- it's a very sacred place. And in that area there's sacred sites, traditional Lakota burial sites as well as different parts of, you know, where you would find historical petroglyphs and different sacred sites like that.
07461 (5/9 Rapid City hearing)		Individual	Today, like we said, you know, the chairman before me, he said the NEPA, NHPA, all the federal laws that your government is supposed to protect for the people is not happening. So today, for the record, and your record, I'm going to say that there was never no true meaningful consultation on these issues.
07462 (Hot Springs hearing)		Individual	As a rancher, I have to have a cultural resource study done so that I can do work on my property. So I see no reason why a foreign company should be exempt from this cultural resource study. The cultural resources that you were wondering about and stuff like that, as a rancher, when I want to put a pipeline and I'm several miles away from where you're going to put this site, I have to do this study. And the reason why is because pre-historic Indians were in the area. Well, then you just follow the trail, and it goes up to Craven Canyon, where the petroglyphs are. And anyway, that's relatively close to where the mining is. So I'm quite sure all the Natives that have spoken here really know that, you know, this is a sacred ground to them.
07462 (Hot Springs hearing)		Individual	Number one is we need to conduct independent cultural surveys on the Dewey-Burdock area.
07462 (Hot Springs hearing)		Individual	The thing that I missed last time was, I wanted to say that what I saw at Standing Rock was nobody -- nobody looked over on the lands. Nobody respected what was there, you know. I want proper geographic surveys of the land that you guys are going to be putting whatever holes in. Probably shouldn't do that anyways. I'd say no to that, just for the record. But I mean, like one of the most horrible things I've ever seen is when, you know, these people were allowed to make this pipeline path or whatever, people watched bones being pushed up out of the ground. I don't know how many people heard about it or saw pictures of it, but you could see it when that ground was, you know, pulled up. There were bones sticking out of it. That was people's ancestors, family members, grandparents, mother, fathers, children. It's a horrible thing, you know, that was allowed to happen. So you know, it has to be voiced that that should be, you know, looked at, and it should definitely be looked at while under supervision of tribal members or something. Because from the sounds of it, from earlier testimonies, even if there are, you know, things found, Oh, let's just sweep it under the rug and pretend it wasn't there, you know. Oh, it's just meaningless.

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07463 (Edgemont hearing)	Ex. 6 Personal Privacy (PP)	Individual	They [the Lakota people] should be consulted, and they are the ones to approve the cultural, archaeological, and religious surveys that take place, and they should have the final say about what goes on here. [...] This project should not go forward at all unless and until the old mines have been cleaned and tribal-approved cultural, religious, and archaeological surveys take place, and true, genuine consultation with the tribes happens.
07463 (Edgemont hearing)		Individual	I ask again that you have tribally approved archaeologists, tribally approved surveyors, and understand that we are fighting for the future, and we should not be going up against our own government agencies to protect our future.
07464 (mass mailer text)	N/A	N/A	A full survey of cultural and historical sites is needed before mining or deep disposal is allowed. Cultural and historical sites must be protected.
07642 (Hot Springs hearing)	Ex. 6 Personal Privacy (PP)	Individual	Genuine tribal consultation should occur. Tribal-approved cultural and archaeological surveys should occur. [...] The tribal sovereignty and cultural issues have not been genuinely addressed.
8050 (10/5 Hot Springs hearing)		Individual	And even saying that the cultural protections have been served, I've heard tell that all the examination of the cultural site was done under a great deal of snow and couldn't have possibly been done.
8050 (10/5 Hot Springs hearing)		Individual	My name is Karen Ellison. The EPA wants to disregard the cultural impact of the proposed Dewey-Burdock uranium mining project and evaluate impacts from only a technical and scientific perspective. The dictionary defines "culture" as the customs, art, history, and intellectual achievements of a people or nation. Disregarding indigenous culture in your evaluation is just a perfect reflection of what our American culture has become. Disregarding indigenous culture in your evaluation shows just how little you know about indigenous culture. Culture is so much more than arrowheads in a field somewhere or an ancient burial site. The EPA is responsible for its own cultural and scientific analysis, and you can't rely on the NRC's flawed, inadequate, and still-tied-up-in-court record on cultural impact of this project.
8050 (10/5 Hot Springs hearing)		Individual	My name is Julie Santella. I have a bunch of things to say because I have a lot of concerns about the hundreds of pages of these draft permits.

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		The NHPA Document says that the historic properties identified under the Class III surveys appear to be sufficient...there is also a caveat about the outstanding tribal cultural surveys	<p>One important thing to say is that the EPA's requesting information on traditional cultural properties, on potential adverse effects to traditional cultural properties, per Section 106 of the National Historic Preservation Act.</p> <p>If that is true, then these draft permits should not have been issued prior to meaningful tribal consultation taking place, period. Period. So I can't believe that you're actually concerned about that because -- because that's the case.</p> <p>The second thing that is really concerning is that in these documents, you say that the Nuclear Regulatory Commission's review of cultural resources appears sufficient. The Atomic Safety Licensing Board disagrees with you. The D.C. District Court of Appeals disagrees with you. The NRC's analysis of cultural resources has been deemed illegal, and so it doesn't give me a lot of confidence in the EPA that your documentation doesn't reflect that.</p> <p>The third thing that I wanted to bring is that the EPA can't just consider impacts to underground sources of drinking water or effects to human health from a scientific perspective or from a legal perspective. You also ask for feedback on your environmental justice analysis, which I have a lot to say about, and I'll be providing written comments.</p> <p>So the last thing I want to do is just read out to you a few regulations under your own system of law that requires you to consider issues of treaty and issues related to culture and spiritual significance.</p> <p>The National Historic Preservation Act, Section 101(d)(6)(B) requires any federal agency, that includes the EPA, to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking.</p> <p>That is this project.</p> <p>Executive Orders 13007 and 13175 require the federal government to honor treaty rights and avoid any action that may adversely affect access to, ceremonial use of, or the physical integrity of sacred sites. That also applies to this project, and the EPA is bound by those orders.</p> <p>National Historic Preservation Act, executive orders, the U.S. Constitution, Supreme Court law, the NRC's decision, the D.C. Court of Appeals, these -- you can't -- the EPA is not allowed to ignore -- this is your own system of law that holds you to these things.</p> <p>So I wanted to remind you today that you all have obligations and that if you continue to fail to fulfill those obligations, then we will be here to remind you of them.</p>
8050 (10/5 Hot Springs hearing)	Ex. 6 Personal Privacy (PP)	Individual	<p>My name is Dr. Lillas Jarding. I am, among other things, a Ph.D. in environmental policy, and I also come to you today as president of Clean Water Alliance.</p> <p>First things first: Cultural resources must be protected. EPA's attempts to remove consideration of cultural and spiritual issues is illegal. You also should not piggyback on an insufficient Nuclear Regulatory Commission process that's been declared insufficient via federal appeals court.</p>
8149		Individual	In its revised draft permits, the EPA acknowledges that the Lakota and other indigenous nations have important cultural, spiritual, and legal ties to the Black Hills. But then the EPA says it won't consider these issues in making its decisions. This is a clear violation of the requirement

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			<p>that these types of issues must be considered during the permitting process. (EJ)</p> <p>[...]</p> <p>The current plan to identify and protect cultural resources is totally inadequate. It allows unqualified Powertech employees to self-monitor and determine the locations of cultural sites when they think they encounter one using heavy equipment. This creates a situation in which cultural resources are very likely to be destroyed. A thorough, tribally-designed process for cultural resources identification and protection should be undertaken and completed before any permit is issued or any earth is moved.</p>
8158	Anonymous	Individual	<p>In its revised draft permits, the EPA acknowledges that the Lakota and other indigenous nations have important cultural, spiritual, and legal ties to the Black Hills. But then the EPA says it won't consider these issues in making its decisions. This is a clear violation of the requirement that these types of issues must be considered during the permitting process.</p> <p>[...]</p> <p>The current plan to identify and protect cultural resources is totally inadequate. It allows unqualified Powertech employees to self-monitor and determine the locations of cultural sites when they think they encounter one using heavy equipment. This creates a situation in which cultural resources are very likely to be destroyed. A thorough, tribally-designed process for cultural resources identification and protection should be undertaken and completed before any permit is issued or any earth is moved.</p>
8181	Ex. 6 Personal Privacy (PP)	Individual	Please throw out your draft permits based on incomplete cultural information and start over now, with proper and meaningful Tribal consultation. Do a thorough, respectful and tribally-designed process for identification and protection of Native American cultural resources. It's the right thing to do and it's the law.
8184		Individual	For instance, while EPA said that the NRC's review of cultural resources "appears sufficient," actually, their review was ruled "not sufficient" by a federal court. Therefore, EPA must perform a cultural resource review that follows federal law and no draft permits should be issued until meaningful consultation with the Tribes takes place. EPA must consider potential negative impacts to human health from a cultural perspective, as well as from a technical/scientific perspective.
8199		Individual	First, It is completely inappropriate that the tribes have not been consulted prior to formulation of the draft plan. I would be in support of their concerns for this project in their unceded homeland of the Black Hills. There are many resources of environmental and cultural importance that must be protected for their benefit as sovereign nations.
8232	Rebecca Terk	Dakota Rural Action	Additionally, no permits should be issued without a full cultural and historic survey of the site by teams assembled by affected area tribes. Because the EPA issued draft permits without these surveys, and without necessary tribal consultation, issues raised by the tribes were not considered in the process. This is a serious violation of treaty rights, as well as a violation of Section 106 of the National Historic Preservation Act. This process cannot move forward without consultation with and surveying by the indigenous peoples whose homelands these are, and whose future generations would be most affected by the contamination and destruction this

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			project represents.
8254.2	Mike Faith	Standing Rock Sioux Tribe	<p>I am requesting a government-to-government meeting with EPA to articulate our concerns with the revised draft permits, environmental justice report, and National Historic Preservation Act section 106 compliance. We are concerned with the extent that in issuing the revised permits, the EPA ignored our Tribe's comments to the 2017 drafts.</p> <p>[...]</p> <p>I understand that this letter and future Tribal correspondence relating to the Dewey Burdock UIC permits will be part of the public record for this EPA Region 8 docket. Please contact Standing Rock Department of Water Resources Director Doug Crow Ghost at [HYPERLINK "mailto:dcrowghost@standingrock.org"]. (701) 854-8534, or Environmental Protection Agency/Department of Environmental Regulation Program Director Allyson Two Bears at [HYPERLINK "mailto:atwobears@standingrock.org"]. (701) 854-3823 to arrange a government-to-government meeting with the Standing Rock Sioux Tribe on this important issue. Thank you for your attention to this matter.</p> <p>Sincerely, Mike Faith, Jr, Chairman Standing Rock Sioux Tribe</p>
8263	Ex. 6 Personal Privacy (PP)	Individual	<p>The Dewey Burdock Project is located in 1868 Ft. Laramie Treaty territory, an area reserved by Constitutional law for the Oceti Sakowin, or Seven Council Fires of the Great Sioux Nation. This area is sacred ground to them, and the Oglala Sioux Tribe has been in federal court and administrative appeals over the project for years, arguing for protection of water and cultural resources threatened by what would be the first-ever mining of uranium in the aquifers of the state of South Dakota. Proper consultation was not done; there is NO Indigenous consent for the project — and rightly so.</p>
8267	Anonymous (Jeff Parsons)	Oglala Sioux Tribe	<p>EPA DEWEY-BURDOCK Uranium Cumulative Impacts Report Magpie Buffalo, 7 Sacred Rites, Maka San, and Aquifer Teachings</p> <p>First, the Nuclear Regulatory Commission process for the proposed Dewey-Burdock project thus far has not allowed for tribal members, on and off reservations, to provide meaningful input on the cultural and spiritual significance of the proposed Dewey-Burdock site, which is an ancient winter camp area for Lakota people, and the potential for the project to desecrate, demolish, and destroy this important and sacred area. The US Court of Appeals for the District of Columbia ruled in 2018 that the NRC staff has failed to comply with the National Environmental Policy Act. The legal challenges raised by Oglala Sioux Tribe in this matter (Docket No. 40-9075-MLA) remain unresolved to date.</p> <p>The history of this winter camp area, which includes the proposed Dewey-Burdock site, is much older, however. Part of this history is detailed in the attached affidavits, used as testimony in the aforementioned unresolved case between the Oglala Sioux Tribe and the Nuclear Regulatory Commission. The Lakota elder testimony contained within these affidavits represents just a small percentage of the cultural and spiritual knowledge and wisdom held by Lakota people, with great relevance for the proposed Dewey-Burdock project.</p> <p>Relevant treaties/case law to this matter include:</p>

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			<p>Johnson v. McIntosh (1823)</p> <p>Treaty of July 5, 1825 with the Sioune and Oglala Tribes (1825)</p> <p>Fort Laramie Treaty (1851)</p> <p>Fort Laramie Treaty (1868)</p> <p>Antarctica Treaty (1959) (Demonstrating colonial/Imperial theft.)</p> <p>United States v. Sioux Nation of Indians (1980) (Docket 74, proving the theft/illegal taking of the Black Hills in violation of the 1868 Fort Laramie Treaty)</p> <p>City of Albuquerque v. Browner (1993) (Isleta Pueblo win against the City of Albuquerque, affirming that Isleta residents have the right to clean river water for the purposes of farming and religious ceremony.)</p> <p>Washington State Department of Licensing v. Cougar Den, Inc. (2019) (Affirming that the 1855 treaty between the United States and the Yakama Nation forbids the State of Washington to impose a fuel tax on Yakama Nation members.)</p> <p>Herrera v. Wyoming (2019) (Affirming that the Crow Tribe's hunting rights, as established in the 1868 treaty between the United States and the Crow Tribe, in exchange for lands comprising most of what is currently Montana and Wyoming, did not expire upon the establishment of the State of Wyoming.)</p> <p>Despite the colonial system's efforts at appropriation, including through Western disciplines such as anthropology, archaeology, and paleontology, sacred site wisdom tied to star knowledge and ongoing spiritual practice intellectually, culturally, and spiritually belongs to the Lakota people. Lakota people have ancient connections to the Black Hills, including the DeweyBurdock winter camp area: sacred sites above and below ground, caves, fault lines, and ancient migration sites. Elders and spiritual practitioners have vast knowledge far beyond the comprehension of the Western education system, and this knowledge cannot be appropriated, diminished, or dismissed.</p> <p>[ATTACHMENTS: (1) Images from Lakota Star Knowledge: Studies in Lakota Stellar Theology, (2) Table summarizing relevant experience, (3) Testimonies regarding Oglala cultural resources]</p>
8268	<div> <div>Ex. 6 Personal Privacy (PP)</div> </div>	Individual	<p>First, required engagement with Tribal Nations, in the form of govt-to-govt consultation per Executive Order 13175 and in compliance with Section 106 of the National Historic Preservation Act, has barely begun. These draft permits should not have been issued before proper and meaningful Tribal consultation takes place, especially given that the EPA is explicitly seeking comments on "the identification of traditional cultural properties at the Dewey-Burdock Project Site."</p> <p>[...]</p> <p>If the EPA is interested in the cultural significance of the Dewey-Burdock area, it must meaningfully consult with Indigenous peoples who have been the caretakers of these lands since time immemorial.</p> <p>Next, the EPA's reliance upon the Nuclear Regulatory Commission's cultural resources analysis is wholly inappropriate, given that the NRC process remains tied up in ongoing and unresolved litigation brought by Oglala Sioux Tribe. In 2015, the Atomic Safety and Licensing Board ruled that the NRC staff had failed to comply with the National Historic Preservation Act in this matter. In 2018, the US Court of Appeals for the District of Columbia upheld that decision, ruling again that the NRC staff had failed to properly identify and consider</p>

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			impacts to cultural resources related to the proposed Dewey-Burdock project. Therefore, when the EPA notes in its draft National Historic Preservation Act Compliance document that the NRC's review of cultural resources "appears sufficient," they are contradicting both the ASLB and the DC Court of Appeals. The NRC Programmatic Agreement, referenced in the National Historic Preservation Act Compliance document, is not valid, because one of the conditions of the PA, that a cultural resources survey be conducted, has not yet happened.
8286	Ex. 6 Personal Privacy (PP)	Individual	<p>I submit the following comments regarding the proposed Dewey-Burdock ISL uranium mine and deep disposal wells in South Dakota along the southwest edge of the sacred Black Hills.</p> <p>1. The EPA has acknowledged that the Lakota and other indigenous nations have important cultural, spiritual, and legal ties to the Black Hills. Draft permits should not have been issued until meaningful Tribal consultation was completed pursuant to the National Historic Preservation Act, so that the public can consider and comment on the issues raised by the Tribes as part of this review process.</p> <p>The current plan to identify and protect cultural resources is totally inadequate. It allows unqualified Powertech employees to self-monitor and determine the locations of cultural sites during mining activities. This creates a situation in which cultural resources are very likely to be destroyed. A thorough, tribally-designed process for cultural resources identification and protection must be undertaken prior to the issuance of any permit or any earth moving activities.</p>
8252	Lillas Jarding	Clean Water Alliance	<p>After all that, your failure to consider these issues is in clear disdain of the National Historic Preservation Act, the environmental review process, and the many comments that you have received. It should be clear to you that water is a spiritual issue, a cultural issue, and a treaty issue. You cannot separate water from spirituality or water from culture or water from treaties and say that you will only consider one or the other. We urge you to look at these matters in more depth and to give full consideration to Tribal concerns, followed by appropriate action – the denial of these permits.</p> <p>Related topics that should be studied – but that are not covered in the current documents – include:</p> <ul style="list-style-type: none"> * Specific measures to protect publicly-known cultural, historical, and sacred sites. * A process other than allowing non-qualified Powertech staff to self-monitor on cultural issues, determine the importance of sites as they're encountered by heavy equipment, and then perhaps have time to arrange for the protection of cultural and/or sacred sites. This is a recipe for destruction of cultural sites. Some of us have friends who are heavy equipment operators or have been heavy equipment operators, and we know the industry standard. * Protection of landscape-scale cultural and spiritual sites. <p>Piggybacking on the failed NRC cultural resources process would not fulfill the EPA's responsibilities in this matter any more than it has fulfilled the NRC's responsibilities. [...]</p>
8291	Charmaine White Face	Defenders of the Black Hills	In their Request for Determination of Special, Exceptional, Critical or Unique Lands and Intent to Operate on Aug. 20, 2008, to the SD Department of Environment and Natural Resources regarding Cultural Resources in the land area where they wish to conduct their ISR mining operation, Powertech/Azarga, on page 10 stated that a

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			<p>Level III Cultural Resources Evaluation was conducted by the Archaeology Laboratory, Augustana College, Sioux Falls, SD. The report from Archaeology Laboratory states:</p> <p>"The small number of Euroamerican sites documented was not unanticipated given the peripheral nature of the project area in relation to the Black Hills proper. The disparity existing between the number of historic [since 1874 - Author's note] and prehistoric sites [non-Euroamerican - Author's note] observed in the project area is also not unexpected; however, the sheer volume of sites documented in the area is noteworthy. [Author's emphasis] The land evaluated as part of the Level III cultural resources evaluation has an average site density of approximately 1 site per 8.1 acres. Even greater site densities were reported in 2000 during the investigation of immediately adjacent land parcels for the Dacotah Cement/land exchange (Winham et al., 2001). This indicates that the permit area is not unique, in regards to the number of documented sites, and is typical of the periphery of the Black Hills."</p> <p>The Cultural Resources that are not Euroamerican and considered prehistoric in the planned mining area belong to Indigenous peoples including members of the Sioux nation. This planned mining area was an ancient burial ground not recorded by Euroamericans but passed down through the generations in oral traditions. These cultural resources would also include teepee rings, fire circles and sweat lodge areas. The Indigenous families or clans traveled to this area to bury the remains of their deceased, or place them in trees, depending on the peoples' traditions. During this process, they would also need to stay in the area a few days.; hence the teepee rings and fire circles. Ceremonies were also held in certain places and our organization discovered a sacred site that is located within the mapped mining area. However, this information has not been made public due to the protection of this site from exploitation.</p> <p>Although our organization submitted photographs of gravesites in this planned mining area to both the Nuclear Regulatory Commission and the SD Minerals and Environment with our recommendation that the land area must not be disturbed, our recommendation was totally ignored. In addition, this author was with a group from the SD Department of Environment and Natural Resources when cultural resources were driven over by vehicles, and people walked right over cultural resources without noticing them and their locations.</p> <p>There is a large number of prehistoric cultural resources in this proposed mining area that must be protected as they must not be disturbed nor can they be mitigated. Many other places in the world prize their areas of ancient treasures that are irreplaceable, and those countries protect and preserve such areas to the best of their ability. This proposed mining area is a part of just such a rare treasure and must be protected and preserved.</p> <p>Recommendation: An extensive cultural survey needs to be completed by members of the Sioux Nation who know and practice our old traditions and can show exactly where these cultural resources are located if they are permitted to do so.</p>
8196.3	Thomas Brings	OST THPO	<p>The thoughts provided in these comments will stress the continued need and request for a hard look cultural survey. These comments will also offer reasons the people of the Oglala Sioux Tribe hold the lands and resources sacred.</p>

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			<p>It is vital the Oglala Sioux Tribe is granted the opportunity to conduct a Traditional Cultural Survey of the Dewey-Burdock uranium mine project and take another look at the previous findings of the archeological survey in place.</p> <p>The approval of the 1992 amendments of the National Historic Preservation act established Section 101 (d) (6) (A) & (B) that allow the Indian Tribes to identify historic properties of religious and cultural significance. The Standards for developing environmental documents to comply with Section 106, Indian Tribes must be consulted on the effects of the undertakings on historical properties. The Federal agency who is taking the lead in the endeavor won't be able to make a knowledgeable decision if the Oglala Sioux Tribe is not allowed to make a class III hard look survey and identify cultural and historic properties that are important to what the tribe holds sacred.</p> <p>[...]</p> <p>The Oglala Sioux Tribe maintains they were not afforded the opportunity to discuss the effects the Dewey-Burdock project has had on the cultural and religious properties that are considered significant. The archeologist(s) who conduct the surveys for the companies of drilling and mining projects do not have the knowledge of the connection the Lakota have to the water, land, air, or the cultural environment. The archeologist(s) are not able to identify what is important to the Lakota people, they cannot identify our stone features, cultural sites, and sacred landscapes that are attached to water. The knowledge of these and the ceremonies were and are passed from one generation to the next through oral interpretations. There are no individuals in modern science or technology who have the ability to describe or interpret this knowledge. The archeologist who are doing the surveys for the Dewey-Burdock expansion and other mining projects fall into this category of the uninformed.</p> <p>To be able to identify and catalogue potential items of cultural, historical, and religious significance to the Oglala Sioux Tribe, a through survey needs to be conducted by person who are knowledgeable in aspects of what is important to the Tribe. The survey needs to be conducted by members of the Oglala Sioux Tribe with a methodology developed for these purposes.</p>

